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SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

REPORT

ON

H.R. 4784
TRADE REMEDIES REFORM ACT OF 1984

MARCH 12, 1984

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SUBCOMMITTEE ON TRADE

March 12, 1984

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

The Subcommittee on Trade on February 29 ordered H.R. 4784, the "Trade Remedies Reform Act of 1984," reported by voice vote with amendments for favorable consideration by the full Committee on Ways and Means. This legislation was introduced on February 8, 1984, reflecting tentative decisions in conceptual form during previous Subcommittee markup sessions. The bill focuses on amendments to the countervailing duty and antidumping laws under the Tariff Act of 1930 as amended in the Trade Agreements Act of 1979. The basic purposes of the bill are to broaden the scope of subsidy and dumping unfair trade practices to be covered by these trade remedy laws and to make various procedural amendments to expedite and reduce the costs of obtaining relief.

The Subcommittee adopted the following three substantive amendments in H.R. 4784 as introduced:

1. By voice vote, deletion of section 102 of the bill as introduced, which reduced the period for making determinations in antidumping investigations to coincide with time limits under the countervailing duty law, in conjunction with the addition of section 106, to remove the requirement for duplicate public hearings by the International Trade Commission during investigations under both laws involving the same merchandise from the same country.

2. By voice vote, an amendment to section 102 of the bill as ordered reported, imposing a maximum 24-month time limit on any agreements to limit imports as a basis for terminating or suspending countervailing or antidumping investigations, in conjunction with the addition of section 103 to require interim

negotiations under the agreements and the imposition of countervailing or antidumping duties upon termination of the agreements in order to offset any residual subsidy or dumping margins.

3. By voice vote, an amendment to section 105 eliminating the lowest-free market price alternative to the present surrogate country test for determining foreign market value in antidumping investigations involving nonmarket economies.

Transmitted herein, in accordance with the rules of the Committee, are copies of H.R. 4784 as amended, together with a report containing a description of the background and purpose of the bill; a summary of the bill as amended; a section-by-section analysis, justification, and comparison with present law; and a preliminary estimate of the effects of the bill on revenue. Also included is a summary of written comments on the bill received by the Subcommittee. Testimony received by the Subcommittee in hearings during the spring of 1983 on options to improve the trade remedy laws is published in Committee Serials 98-14 and 98-15.

I request that consideration by the Committee on Ways and Means of H.R. 4784 as amended be scheduled as soon as possible.

Sincerely,

Sam M. Gibbons
Chairman

SMG/MJn
Enclosures

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BACKGROUND AND PURPOSE OF H.R. 4784, AS AMENDED

Overview

H.R. 4784, as amended, the Trade Remedies Reform Act of 1984, contains comprehensive amendments to Title VII of the Tariff Act of 1930 (as amended by the Trade Agreements Act of 1979). Title VII sets forth the basic definitions, terms, and procedures for imposing countervailing and antidumping duties, which represent the fundamental remedies for U.S. industries against injurious foreign subsidization or dumping. These laws are administered by the Department of Commerce as the "administering authority" for determining the existence of subsidies and dumping, and by the International Trade Commission (ITC) for determining whether a U.S. industry is materially injured or threatened with material injury by reason of imports which are subsidized or sold at less than fair value.

H.R. 4784 strengthens and improves Title VII in several important respects. First, it clarifies and expands the scope of these laws to cover newer forms of unfair trade practices, such as foreign industrial targeting, upstream subsidies, natural resource subsidies, and downstream dumping. Second, it provides a more realistic method than present law for determining whether to apply a nonmarket economy dumping test and places a greater burden on the foreign government to prove their country is market oriented for purposes of the dumping law. Third, it provides several needed definitions and guidelines to govern the agencies responsible for administering these laws on such issues as threat of injury, cumulation of imports, and coverage of likely sales or leases. Fourth, H.R. 4784 places limits on the use of various types of settlement mechanisms--particularly offsets and quantitative restriction agreements--in order to prevent excessive use of import quotas that may have adverse long-term consequences and do not eliminate the unfair dumping or subsidy. Fifth, the bill mandates several significant procedural changes that will lower legal costs, simplify investigations for all parties, and greatly reduce the administrative burdens on the agencies that carry out these laws. Sixth, it establishes a centralized Trade Remedy Assistance Office in the International Trade Commission to assist industries in understanding and utilizing the many trade remedies available under U.S. law. It also mandates greater assistance to qualifying small businesses in preparing and filing trade remedy petitions. Seventh, it creates a Targeting Subsidy Monitoring Program in the ITC so that the government will engage in a comprehensive and coordinated effort of monitoring and analyzing the industrial policies of our trading partners.

Need to Improve Existing Law

Together, these changes strengthen and streamline the basic regime in U.S. law governing injurious unfair trade practices. These two laws are vital to the maintenance of fair trade, because they offset and deter the use of predatory dumping and subsidization in the U.S. market by foreign governments or exporters. However, during its extensive hearing review of the operation of our trade remedy laws during the spring of 1983 (see Committee on Ways and Means Serials 98-14 and 98-15), the Subcommittee was made aware of the widespread attitude throughout American industry that the antidumping and countervailing duty laws need various improvements to make them more effective in deterring the injurious practices they were intended to address. Principal criticisms center around the inadequate coverage of emerging and more subtle practices such as targeting, and the enormous costs and procedural delays associated with these laws.

Targeting

A major concern of many industries was the issue of foreign industrial targeting and its coverage under present law. Many foreign governments are actively targeting export industries by

bestowing upon them the benefit of several government actions which, although not comprised of cash subsidies in the form of direct grants, loans or debt forgiveness, are nevertheless based on the principle of active government intervention and support. It is clear that the rigid construction of present law is inadequate to the task of disciplining these government policies, which unquestionably have the same effect as a normal cash subsidy. These practices--whether they be special home market protection, preferential procurement, or government control over private financing--must be quantified and brought under some effective discipline when they are part of an overall plan or scheme to promote exports in a specific industry. In this connection, domestic industries stress the need for more comprehensive and continuous monitoring by the U.S. Government of the very complex industrial policies of our trading partners in order to anticipate and deter the potentially injurious effects of export targeting practices.

Upstream Subsidies and Downstream Dumping

Another major area of concern is unfair trade at prior stages of manufacture or production--the problem of so-called "upstream subsidies" and "downstream dumping" of products which are subsequently incorporated into the final imported product. These problems have, in the view of many industries, multiplied in scope without any effective discipline under present law. Some domestic industries believe these policies and practices are being adopted specifically to circumvent our trade laws. But because of the rigid definition of "like product" and "domestic industry" in our laws (which are partly a result of our international obligations), they have been very difficult issues to address.

Natural Resource Subsidies

Growing concern is also being expressed by U.S. manufacturers of natural resource-based products which face increasing import competition from energy rich countries pricing for domestic use below their prices for export or fair market value. The Subcommittee held a separate hearing solely on the issue of foreign national resource pricing practices and their impact, in particular to develop more appropriate standards under the countervailing duty law for determining the existence and amount of such subsidies.

Settlement Agreements

Many have argued that acceptance of offsets has allowed foreign subsidies to continue and that greater discipline must be exercised over the use of quantitative restraint agreements as a means of settling unfair trade cases. Under present practice such arrangements are entered into for indefinite periods without any requirement that the foreign government or exporters achieve the basic objectives of these laws by eliminating their subsidies or dumping. The consequences of import quotas in terms of higher prices and reduced availability of supplies have been virtually ignored in the pursuit of a political "solution" sought by the domestic industry and its foreign counterparts.

Procedural Simplification; Clarification of Standards

The need for procedural simplification and clearer standards are perennial ones, and it was not surprising that many groups felt improvements were necessary in these areas. In particular, the need to simplify and rationalize price adjustments in antidumping investigations and to eliminate unnecessary interlocutory court review were addressed. There is general consensus on the need to totally revamp the unsatisfactory manner in which these two laws presently deal with the pricing policies of nonmarket economies. The Subcommittee sought a solution to this problem, but in the end was only able to agree for the time being on a modest change permitting an examination of nonmarket economy pricing on a sector-by-sector rather than countrywide basis.

Small Business Assistance

A particular concern of many groups is the nearly insurmountable burden experienced by small business entities in trying to file and litigate cases. In some instances, the legal fees and other startup costs have deterred small business entities from pursuing actions. Another problem of equal magnitude is the widespread lack of information among small business groups as to the many types of trade remedies available under U.S. law and the particular law under which a given complaint might best be pursued. Several witnesses expressed the need for a central office somewhere in the government to disseminate and explain basic information about the various trade remedies available under our laws.

Principles Underlying H.R. 4784, As Amended

H.R. 4784 seeks to address legitimate concerns about the scope and administration of the antidumping and countervailing duty laws while at the same time maintaining the basic principles of due process, transparency, and fairness which underlie these laws. In particular, a basic criterion guiding the Subcommittee in including amendments of these laws in the bill was to maintain their consistency with the letter and the spirit of the General Agreement on Tariffs and Trade (GATT), particularly Articles VI and XVI, which govern the use of these remedies, and with the Agreement on Antidumping Measures and the Agreement on Subsidies and Countervailing Measures negotiated under the auspices of GATT and signed by the United States in 1979.

A second basic principle of H.R. 4784 is to maintain present standards of material injury to a U.S. industry as a basic requirement for all of the unfair practices set forth in the bill (except subsidy practices maintained by countries that have not signed the Agreement on Subsidies and Countervailing Measures or undertaken substantially equivalent obligations). Therefore, the bill only addresses practices with a materially injurious effect in the U.S. market. It does not deal with the effects of such practices in third-country markets or with the need for reciprocity in the market of the exporting country.

The Subcommittee believes that the GATT agreements obligate signatory countries to refrain from using the types of practices addressed by H.R. 4784 in a manner that injures or impairs trade benefits of other countries. Expansion of the scope of our countervailing and antidumping laws to cover these subtle and rapidly growing forms of unfair behavior should not be viewed as a unilateral departure by the United States from our international understandings. Rather, the amendments recognize the fact that conditions of commerce are rapidly changing; government intervention throughout the world is growing at a disturbing pace and is also changing form. If the United States fails to respond to the challenge of new unfair trade practices, the entire concept of free trade and market forces will eventually erode beyond repair.

With respect to the inclusion of procedural improvements and other streamlining measures, it should be noted that H.R. 4784 is designed to make the antidumping and countervailing duty laws more accessible, less costly, less complex and time-consuming, and easier for the respective agencies to administer. At the same time, the bill does not eliminate any fundamental procedural safeguards that parties to such an investigation now enjoy, and maintains adherence to all of the substantive and procedural requirements of the GATT agreements. In fact, the bill retains the basic framework of open procedures--hearings, access to information, and judicial reviews--that characterize present law. The bill does eliminate needless procedural complexities, however, and provides a much better basis for efficient administration with fewer costs to the litigants and the prospect of more timely relief for petitioners. These streamlining measures are essential if the process is to avoid becoming overburdened with legalisms.

Finally, the Subcommittee deliberately confined the scope of H.R. 4784, as amended, to revisions of the countervailing duty and antidumping statutes and related issues. The Subcommittee received many suggestions during its hearings and in subsequent written comments about the need for reforms in the import relief and retaliatory authorities under sections 201-203 and section 301 of the Trade Act of 1974. The decision to restrict the scope of H.R. 4784 to laws dealing with injurious unfair trade practice in the U.S. market place recognizes that (1) domestic industry generally regards unfair import competition as the primary trade problem that needs to be addressed; and (2) as a practical matter, successful passage requires legislation that is manageable and limited in controversial content. At the same time, the Subcommittee recognizes the need to address the adequacy and operation of other trade remedy laws and intends to make whatever improvements are necessary in a subsequent bill at the earliest opportunity.

SUMMARY OF H.R. 4784, AS AMENDED
The "Trade Remedies Reform Act of 1984"

H.R. 4784, as amended and ordered reported by the Subcommittee on Trade, consists of two titles: Title I amends the scope and certain administrative elements of the countervailing duty and antidumping duty laws under Title VII of the Tariff Act of 1930 as amended by the Trade Agreements Act of 1979; Title II makes related procedural improvements through the addition of two new sections to the Tariff Act of 1930.

Title I--Amendments to Countervailing Duty and Antidumping Duty Laws

Section 101. Clarification of General Rule

Amendments clarify that the countervailing duty and antidumping laws cover likely sales and certain leasing arrangements, as well as sales and imports that have already occurred.

Section 102. Termination or Suspension of Investigations

A. Offsets: The use of export taxes or other types of "offsets" is eliminated as a basis for suspending countervailing duty cases. The 6-month grace period for eliminating a subsidy or dumping practice under a suspension agreement is eliminated.

B. Quantitative restriction agreements: Authority to enter into quota-type arrangements as a means of suspending countervailing duty investigations or terminating either antidumping or countervailing duty cases is limited only to circumstances in which the President determines that the effect on consumers of import quotas would be less adverse than imposition of duties. Also, such agreements are limited to a maximum duration of two years.

Section 103. Reviews and Determinations Regarding Certain Agreements

The President must enter into negotiations within 90 days after accepting any quantitative restriction agreement with the foreign government to seek elimination of the subsidy or dumping or its reduction to a level that removes the injurious effects. Countervailing or antidumping duties must be imposed to offset any remaining subsidy or dumping margin upon expiration of the agreement.

Annual reviews of outstanding antidumping and countervailing duty orders would be required only if requested by an interested party, rather than in all cases.

Section 104. Definitions and Special Rules Regarding Upstream and Other Subsidies, Downstream Dumping, Material Injury, and Interested Parties

A. Subsidies: The list of practices specifically defined in the law as subsidies actionable under the countervailing duty law is expanded to include export targeting subsidies, natural resource subsidies, and upstream subsidies. The material injury test under present law must be met for countervailing or antidumping duties to be imposed.

1. Targeting: "Export targeting subsidies" are defined as government plans or schemes involving coordinated activities that are bestowed on specific enterprises or industries and have the effect of assisting the beneficiaries to become more competitive in exporting particular products. The provision is intended to deal with indirect forms of government assistance that do not involve a cash transfer but nevertheless have a subsidizing effect. An illustrative list of such practices is included in the statute.

2. Natural Resource Subsidies: "Natural resource subsidies" involve a government controlled or regulated natural resource price that is lower for domestic use than the export price or the fair market value, is not freely available to U.S. purchasers for export, and constitutes a significant component cost of the product under investigation.

3. Upstream Subsidies: "Upstream subsidies" are subsidies at prior stages of production than the final imported product which result in a price for the input that is lower than the generally available price and has a significant effect on the cost of manufacturing the final product.

B. Downstream Dumping: "Downstream dumping" is defined as sales of materials below their fair market value which are incorporated into the final imported product if the dumped price is below the generally available price of the input and has a significant effect on the cost of manufacturing the final product. For the first time antidumping or countervailing duties must include the amount of any downstream dumping.

C. Clarification of Injury Test Provisions:

1. Cumulation: The principle of cumulation of imports of like products from two or more countries under simultaneous investigation is mandated under certain conditions for purposes of assessing injury.

2. Threat of Injury: Statutory guidelines are established for determining threat of material injury, based upon previous legislative history.

D. Interested Parties: The definition of parties with standing to file antidumping or countervailing duty petitions is expanded to include coalitions of firms, unions, or trade associations with standing.

Section 105. Nonmarket Economy Pricing

The nonmarket economy country provision of the antidumping law is amended to require the Department of Commerce to determine whether a particular sector of a country's economy, rather than the economy as a whole, is State-controlled to an extent that foreign market value cannot be determined under normal dumping rules. A greater burden is placed on the nonmarket country or its suppliers to demonstrate that its cost and price information is sufficiently reliable for it to be treated as a market economy.

Section 106. Hearings

The International Trade Commission would no longer be required to hold duplicate hearings during its injury investigations when antidumping and countervailing duty cases involve the same merchandise from the same country except in extraordinary circumstances. Opportunity is provided for submission of written comments.

Section 107. Verification

Present requirements for verification of information are extended to decisions by the Department of Commerce to revoke outstanding antidumping or countervailing duty orders.

Section 108. Release of Confidential Information

A new standardized method is provided for releasing confidential information, based upon the filing of "standing requests" by all parties at the outset of an investigation and routine decisions on release as confidential information is submitted. Corporate in-house counsel could receive confidential information under protective order as retained counsel can under present law.

Section 109. Sampling and Averaging in Determining United States Price and Foreign Market Value

Sampling and averaging techniques utilized by the Department of Commerce in determining foreign market value under the present antidumping law could also be used in determining United States price in dumping investigations and in all aspects of the annual review of outstanding countervailing and antidumping duty orders. The authority to select appropriate samples and averages would reside exclusively with the Department of Commerce.

Section 110. Eliminating of Interlocutory Appeals

All interlocutory judicial review by the court during the course of countervailing duty and antidumping investigations is eliminated. All challenges to agency determinations would be combined and reviewable by the court after final agency action has been taken.

Title II--Miscellaneous Provisions

Section 201. Establishment of Trade Remedy Assistance Office and Targeting Subsidy Monitoring Program in the United States International Trade Commission

A. Trade Remedy Assistance Office: A central office is created in the International Trade Commission to assist U.S. industries with information and advice on the various trade remedy laws. Also, each agency responsible for administering trade laws is required to provide special assistance to qualifying small businesses.

B. Targeting Subsidy Monitoring Program: The International Trade Commission must establish a program for continuous and coordinated monitoring and analysis of the industrial plans and policies of foreign governments. Regular reports would be issued on the information obtained.

Section 202. Adjustments Study

The Department of Commerce must conduct a study of its current practices in making adjustments to various prices used under the antidumping law and submit a report to the Congress within one year containing recommendations as appropriate for simplifying and modifying these practices.

Section 203. Effective Dates

The provisions of H.R. 4784, as amended, would take effect on date of enactment except as otherwise specified.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

SHORT TITLE

H.R. 4784, as amended, may be cited as the "Trade Remedies Reform Act of 1984."

SECTION 2. REFERENCE

Section 2 states that any amendment or repeal in the bill of a title, subtitle, part, section, or other provision refers to such provisions in the Tariff Act of 1930, unless otherwise expressly provided.

SECTION 101. CLARIFICATION OF GENERAL RULE

Present law

Section 701(a) states the general rule that a countervailing duty shall be imposed where (1) the administering authority finds a subsidy with respect to merchandise "imported into the United States" and (2) the ITC finds that an industry is materially injured or threatened with such injury "by reason of imports of that merchandise." Section 731 requires the administering authority to determine in antidumping investigations that "foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." [Emphasis added]

Explanation of provision

Section 101 of the bill clarifies the applicability of countervailing duty law to situations where a product has been or is likely to be sold for importation but has not actually been imported. Subsection (a) amends section 701(a) to include the phrase "or sold (or likely to be sold) for importation" after the present enabling language of the statute, which refers solely to merchandise imported. Subsections (a) and (b) make conforming changes in sections 701 and 705(b)(1).

Section 101 also clarifies the applicability of both laws to leasing arrangements that are the equivalent of sales. Subsections (a) and (c) amend sections 701, 705, 731, and 735 by providing that any reference to sales also includes such leases.

Reasons for change

Section 101 is intended to eliminate uncertainties about the authority of the Department of Commerce and the ITC to initiate countervailing duty cases and render determinations in situations where actual importation has not yet occurred but a sale for importation has been completed or is imminent. Antidumping law has, since its inception, applied not only to imports but to sales or likely sales. However, there has been uncertainty as to the applicability of countervailing duty law to such situations because of the limiting language which refers solely to imports.

This change is particularly important in cases involving large capital equipment, where loss of a single sale can cause immediate economic harm and where it may be impossible to offer meaningful relief if the investigation is not initiated until after importation takes place. In cases where injury or threat of injury from a subsidy may occur prior to actual importation, the investigation should not await such importation.

The addition of language regarding leases is intended to clarify the applicability of both laws to sham leases or leases which are tantamount to sales. Because of tax considerations or other business reasons, leasing arrangements are often utilized to accomplish what are in effect transfers of ownership. The Subcommittee intends that the coverage of both laws extend to

such arrangements if the Department of Commerce finds them to be equivalent to sales.

SECTION 102 (of H.R. 4784 as introduced). PERIOD FOR CERTAIN PRELIMINARY DETERMINATIONS; CONGRESSIONAL NOTIFICATION

Section 102 of H.R. 4784 as introduced provides simultaneous timetables for investigations and determinations in antidumping and countervailing duty cases based on the shorter deadlines applicable to countervailing duty cases under current law. Specifically, section 102 amends section 733(b) to require a preliminary determination by the administering authority within 85 days after an antidumping petition is filed or an investigation self-initiated, rather than within the 160 days provided under present law. Section 102 of the bill as introduced also amends sections 703(c) and 733(c) to limit further the authority of the administering authority to extend the deadline for preliminary determinations by declaring a countervailing duty or antidumping investigation "extraordinarily complicated." Such extensions would be reduced to 30 days and the administering authority would be required to notify the appropriate Committees of Congress, in addition to the parties to the investigation as under present law, of an intention to postpone any preliminary determination, including an explanation of the reasons.

These amendments were included in the bill as introduced in order to accelerate antidumping determinations under present law and thereby provide earlier provisional relief, and to end the almost routine practice of extending deadlines for preliminary determinations without due regard to Congressional intent that the case be extraordinarily complicated. In particular, the provision of simultaneous timetables was intended to reduce costs and the administrative burden and delay for both interested parties and the ITC by eliminating the necessity for two hearings on injury in cases involving petitions filed under both laws on the same merchandise from the same country.

The Subcommittee decided to delete this section after receiving evidence from the Department of Commerce and from domestic industries opposing the amendment and indicating that the current length of time for antidumping investigations is necessary to ensure adequately supported decisions, a meaningful opportunity for petitioners to comment on information presented by foreign parties, and to reduce the possibilities of expensive and lengthy judicial review. The Department also has not extended deadlines in a single case since August 1, 1983. In lieu of this section, the Subcommittee amended the bill to add a new section 106 to address the issue of duplicate ITC hearings.

SECTION 102 (of H.R. 4784 as reported). TERMINATION OR SUSPENSION OF INVESTIGATION

Present law

Sections 704(a) and 734(a) of the countervailing duty and antidumping laws respectively authorize the administering authority or the ITC to terminate an investigation, after notice to all parties, upon withdrawal of the petition. The ITC cannot terminate before a preliminary determination by the administering authority. The law does not specify or limit the circumstances under which a petition may be withdrawn and the investigation thereby terminated, although to date there have been no petitions withdrawn and cases thereby terminated prior to a preliminary determination.

Settlement of countervailing duty or antidumping cases through suspension of investigations may result from agreements either (1) to eliminate (or offset) the practice or to cease the exports; or (2) in "extraordinary circumstances," to eliminate the injurious effect of the exports.

The administering authority may suspend a countervailing duty investigation under section 704(b) at any time before its final determination if the government of the subsidizing country agrees,

or exporters who account for substantially all of the imports of the merchandise agree (1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy on exports to the United States within six months after the suspension, or (2) to cease exports of the subsidized merchandise to the United States within six months after the suspension.

The administering authority may suspend an antidumping investigation under section 734(b) before its final determination if the exporters who account for substantially all of the imports of the merchandise agree (1) to cease exports of the merchandise to the United States within six months after the suspension, or (2) to revise their prices to eliminate completely any dumping margin.

No suspension agreement can be accepted under either law unless it provides a means of ensuring that the quantity exported to the United States during the interim period before complete elimination or offset of the subsidy or cessation of exports does not exceed the quantity exported to the United States during the most recent representative period.

In "extraordinary circumstances," the administering authority may also suspend a countervailing duty investigation under section 704(c) before its final determination upon acceptance of an agreement from the government or from exporters accounting for substantially all of the imports if it will eliminate completely the injurious effect of exports of the merchandise to the United States. In "extraordinary circumstances," the administering authority may suspend an antidumping investigation under section 734(c) before its final determination upon acceptance of an agreement to revise prices from exporters accounting for substantially all of the imports if it will (1) eliminate completely the injurious effect of exports of the merchandise to the United States; and if (2) the suppression or undercutting of price levels of domestic products by imports of the merchandise will be prevented, and for each entry of each exporter the amount by which the estimated foreign market value exceeds the U.S. price will not exceed 15 percent of the weighted average excess for all less-than-fair-value entries of the exporter.

Legislative history states the "injurious effect" standard is lower than material injury; there must be no discernable injurious effect by reason of any remaining net subsidy or dumping margin. Agreements with exporters must be with the U.S. Government, not among exporters or with U.S. private parties.

Suspension of a countervailing duty investigation in extraordinary circumstances may take the form of an agreement with the foreign government (not with exporters) to restrict the volume of imports. The administering authority is not authorized, however, to suspend antidumping investigations on the basis of quantitative restriction agreements.

Before suspending any countervailing duty or antidumping investigation, section 704(e) or section 734(e) require the administering authority (1) to notify and consult the petitioner of its intention, and give 30 days advance notice to other parties and to the ITC; (2) to provide a copy of the proposed agreement to the petitioner at the time of notification, including an explanation of how it will be carried out and enforced and how it meets the statutory requirements; and (3) to permit all parties to submit comments and information for the record before the notice of suspension is published.

No form of suspension agreement can be accepted unless the administering authority is satisfied suspension is in the public interest and effective monitoring of the agreement by the United States is practicable. The administering authority must publish notice of any suspension of investigation and issue an affirmative preliminary determination unless it was previously issued.

Within 20 days after suspension of an investigation under an agreement to eliminate injurious effects, a domestic interested party may request under section 704(h) or section 734(h) a review by the ITC, within 75 days after the petition filing, to determine whether the injurious effect of imports of the merchandise is eliminated completely by the agreement. If affirmative, suspension continues as long as the agreement remains in effect, is not violated, and meets the statutory requirements. If negative, the agreement is void and the investigation resumes on the date notice is published, as if the affirmative preliminary determination was made on that date.

An investigation must be continued if the administering authority receives, within 20 days after notice of suspension is published, a request for continuation under section 704(g) or section 734(g) from a domestic interested party or from the foreign government involved in a countervailing duty investigation or from the exporters in an antidumping investigation. If the final determination is negative, the agreement and investigation terminate. If the final determinations are affirmative, a countervailing or antidumping duty order is not issued so long as the agreement remains in force and continues to meet the statutory requirements and the parties carry out their agreement obligations.

If the administering authority determines under section 704(i) or section 734(i) that an agreement is being or has been violated or no longer meets the requirements (other than elimination of injury), the administering authority must (1) suspend liquidation of unliquidated entries; (2) resume its final investigation if it was not completed; (3) issue a countervailing duty or antidumping order immediately if the investigation was continued upon request and the final determinations were affirmative; and (4) notify the petitioner, interested parties, and the ITC. Any intentional violation is subject to a civil penalty as if it were a section 592 fraud case. If suspension is terminated or an investigation continued, any final determination or annual review considers all imports without regard to the effect of any agreement.

Explanation of provision

Section 102 of H.R. 4784 as reported amends the authorities to terminate or suspend countervailing duty or antidumping investigations in three major respects: (1) It eliminates suspensions of countervailing duty investigations based on offsets of the net subsidy by the foreign government or exporters; (2) it removes the 6-month grace period for eliminating subsidies or dumping margins under suspension agreements; and (3) it places limits on the authority to terminate or suspend countervailing duty investigations or to terminate antidumping investigations based on quantitative restriction agreements, and shifts the authority to accept such agreements from the administering authority to the President. In addition, section 102 requires notification of the Commissioner of Customs if the administering authority considers violation of an agreement to be intentional.

Section 102 eliminates the authority under section 704(b)(1) to suspend a countervailing duty investigation based on an agreement by the foreign government involved or by exporters who account for substantially all of the merchandise subject to the investigation to offset completely the amount of the net subsidy on merchandise exported to the United States. Investigations could be suspended on the basis of agreements to eliminate the subsidy completely or to cease exports of the subsidized merchandise to the United States as under present law.

Section 102 also amends section 704(b) and (d) and section 734(b)(1) and (d) to eliminate the 6-month period after the date on which a countervailing duty or antidumping investigation is suspended within which the foreign government or exporters agree to eliminate the net subsidy involved or to cease exports of the merchandise to the United States. Under these amendments investigations could be suspended if the foreign government or exporters

involved agree to eliminate any net subsidy or to cease exports of the merchandise to the United States on the date of the suspension.

Section 102 amends the authorities under section 704(c) and (d)(1) to suspend countervailing duty investigations as a result of quantitative restriction agreements in three respects. First, the amendments would shift the authority to accept any quantitative restriction agreement from the administering authority under present law to the President. Upon the entering into force of a quantitative restriction agreement that meets the requirements of section 704(c) as amended, the administering authority may then suspend the countervailing duty investigation.

Second, as a condition for accepting such an agreement, the President must determine that entry into force of the quantitative restriction would not, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, have a greater adverse effect on U.S. consumers than the imposition of countervailing duties. Before making this determination, the President must consult with potentially affected consuming industries and with all U.S. producers of like merchandise, whether or not they are parties to the investigation. The public interest and monitoring conditions under section 704(d)(1) for accepting any suspension agreements in any form would continue to apply. There would still be no authority to suspend antidumping investigations under any circumstances on the basis of quantitative restriction agreements. Third, the Subcommittee amended the bill as introduced, in conjunction with further amendments under section 103, to limit the duration of any quantitative restriction suspension agreement the President may accept to a maximum period of 24 months.

Since petitions have been withdrawn and investigations terminated in the past on the basis of quantitative restriction agreements, section 102 also amends section 704(a) and section 734(a) to conform the authorities to terminate countervailing duty or antidumping investigations on the basis of quantitative restriction agreements to the amendments described above in the authority to suspend countervailing duty investigations. Investigations under either law could not be terminated by reason of any agreement to limit the volume of imports into the United States of the merchandise under investigation unless (1) the President determines that the agreement would not, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, have a greater adverse effect on U.S. consumers than the imposition of countervailing or antidumping duties; and (2) he accepts the agreement. The determination would only be made after consulting with potentially affected consuming industries and with all U.S. producers of like merchandise, whether or not parties to the investigation. Any such agreement to terminate countervailing duty investigations must be offered by the foreign government involved, not by exporters, consistent with suspension agreements.

The Subcommittee amended the bill as introduced to require that the effective period of any quantitative restriction agreement accepted to terminate an investigation not exceed 24 months, consistent with the same limitation on suspension agreements. The administering authority and the ITC would retain their present authority to terminate investigations in any circumstances not involving import restrictions.

Any quantitative restriction agreement to terminate or suspend a countervailing duty or antidumping investigation also includes any understanding accepted by the President with the foreign government that restricts the volume of imports of the merchandise under investigation into the United States, such as voluntary export restraints.

Finally, section 102 amends sections 704(i)(1) and 734(i)(1) by adding a requirement that the administering authority notify

the Commissioner of Customs if it considers a violation of an agreement suspending a countervailing duty or antidumping investigation to be intentional. The Commissioner would then take appropriate action as provided under section 704(i)(2) or section 734(i)(2) of present law.

Reasons for change

The Subcommittee is concerned that authorities under present law to terminate or suspend countervailing duty or antidumping investigations contain too much flexibility and discretion and have, as a consequence, been used as a device to implement quotas or other quantitative restrictions, such as voluntary restraints. This practice contradicts Congressional intent that the primary remedy for subsidy or dumping practices be offsetting duties. Quantitative restriction agreements permit subsidy and dumping practices to continue to the detriment of domestic interests. The amendments under sections 102 and 103 of H.R. 4784, as reported, limit these authorities with a view to seeking the elimination of offending practices, while at the same time recognizing that termination or suspension agreements may be in the national interest under certain limited circumstances.

The Subcommittee has received many complaints from the private sector about the acceptance of agreements from foreign governments to offset the complete amount of net subsidies as a basis for suspending countervailing duty investigations under section 704(b). Normally offsets take the form of the foreign government agreeing to impose an export tax equal to the amount of the net subsidy, theoretically equivalent to an import duty. However, there is no verification that the tax is actually being collected. In the case of State-owned enterprises there is no guarantee that the government is not funneling funds into the enterprise through various indirect assists as a substitute for the subsidy in order to ensure export competitiveness. Any delays in calculation of an export tax will increase benefits to exporters if there are frequent and sharp devaluations of the currency.

Consequently, the Subcommittee believes it necessary to eliminate the authority to accept agreements to impose offsets as a basis for suspending countervailing duty investigations in order to close the present loophole which permits foreign governments to continue their subsidy practices. In turn, use of offsets could not constitute changed circumstances for purposes of review and possible revocation of a countervailing order under section 751. However, existing export taxes, duties, or other charges, if they are verifiable, could still be applied as offsets to reduce the amount of gross subsidy in order to determine the net subsidy under section 771(b) on which a countervailing duty is based.

The Subcommittee also believes that the ability of a foreign government or exporters to continue to subsidize or to sell at less than fair value for up to six months under a suspension agreement is unwarranted, exposing domestic industry to the effects of continued unfair competition without a remedy during this period. Precluding suspension of an investigation until the foreign subsidy or dumping actually ceases is also intended to provide an incentive for the foreign government or exporters to eliminate the unfair practice as quickly as possible.

The limitations placed by sections 102 and 103 on existing authorities to terminate or suspend investigations arise from the Subcommittee's concern that the countervailing duty and antidumping laws can be used by domestic industries and foreign governments to obtain cartel or orderly marketing arrangements that result in increased prices and reduced availability of supplies for consumers while the unfair trade practices continue. For example, certain segments of the steel industry have complained that they were not even consulted in advance about the United States-European Communities (EC) Steel Arrangement, concluded in 1982 as a basis for withdrawal of petitions by other portions of the industry and termination of investigations. They maintain the Arrangement has had a detrimental impact in terms of higher prices and reduced supplies of basic steel for steel finishers and fabricators. The

amendments under section 102 seek to prevent abuse of the termination and suspension authorities by limiting settlement of cases based on quantitative restrictions only to those circumstances in which the President determines that import quotas are not more adverse to consumers than imposition of duties. The amendments ensure that all segments of the industry potentially affected would be consulted in making this determination.

Basically, the countervailing duty and antidumping laws should be used as Congress intended to try to ensure free and fair trade competition. While settlements based on import quotas would continue to be authorized if certain conditions are met, in most cases the investigation should be completed and duties imposed rather than permitting the foreign country to continue its unfair practice and using these laws to guarantee either the domestic industry or foreign producers a share of the U.S. market in which to obtain higher prices. The imposition of a two-year maximum duration on quantitative restriction agreements and the provisions under section 103 are also intended to lead to removal of unfair competition rather than its continuation as long as imports do not exceed a specified level.

The Subcommittee also believes that the authority to accept quantitative restriction agreements resides more appropriately with the President rather than solely with the Department of Commerce. As in the case of Presidential authority under other trade laws to impose import quotas, major national policy implications broader than the interests of the particular industry are involved and should be considered at the highest level. As in the case of other authorities to restrict imports, the Subcommittee expects that information and policy recommendations to the President would be developed through the interagency trade coordinating mechanism.

SECTION 103. REVIEW OF DETERMINATIONS AND CERTAIN AGREEMENTS

Present law

Provisions relevant to termination or suspension of countervailing duty or antidumping investigations are described under section 102.

Section 751(a) requires that at least once during each 12-month period following publication of a countervailing duty or antidumping order, or notice of suspension of an investigation, the administering authority must (1) review and determine the amount of any net subsidy; (2) review and determine the amount of any antidumping duty; and (3) review the current status of, and compliance with, any suspension agreement including the amount of any net subsidy or dumping margin involved. The results of the review and notice of any duty to be assessed or deposited or investigation to be resumed is published in the Federal Register.

Section 751(b) requires the administering authority or the Commission to review any suspension agreement or affirmative determinations whenever it receives information or a request showing changed circumstances sufficient to warrant a review. The Commission considers whether, in light of changed circumstances, an agreement suspending a countervailing duty or antidumping investigation continues to eliminate completely the injurious effects of imports of the merchandise. Without good cause shown, no suspension agreement or final affirmative determinations can be reviewed for changed circumstances within less than 24 months after their publication. A hearing is held by the administering authority or the Commission during the review upon the request of any interested party. After the review, the administering authority may revoke a countervailing duty or antidumping duty order, in whole or in part, or terminate a suspended investigation, applicable to unliquidated entries entered, or withdrawn from warehouse, for consumption after a date it determines. If the Commission determines a suspension

agreement no longer eliminates completely the injurious effect of imports, the agreement is then treated as not accepted and the administering authority and the Commission proceed with the countervailing duty or antidumping investigation as if the agreement had been violated on that date.

Explanation of provision

The Subcommittee amended H.R. 4784 to add section 103 in conjunction with the amendment to section 102, as reported, which limits to a maximum duration of 24 months any quantitative restriction agreement accepted by the President as a basis for the administering authority terminating a countervailing duty or antidumping investigation upon withdrawal of a petition or suspending a countervailing duty investigation. Section 103 adds two further requirements that (1) during the first year any quantitative restriction agreement is in effect the President seek complete elimination of the subsidy or dumping practices or of their injurious effects; and (2) countervailing or antidumping duties in the amount of any residual subsidy or dumping margin on imports causing material injury replace the quantitative restriction agreement upon its expiration. Section 103 also amends section 751 to require annual reviews only upon request.

Section 103 amends subtitle C of title VII of the Tariff Act of 1930 to add a chapter 2 containing new sections 761 and 762 and to make conforming changes in section 751 of present law.

New section 761 requires the President, within 90 days after accepting a quantitative restriction agreement as a basis for terminating or suspending a countervailing duty investigation under section 704(a)(2) or (c)(3) as amended, or for terminating an antidumping investigation under section 734(a)(2) as amended, to enter into negotiations with the foreign government that is party to the agreement. The objective of the negotiations is to obtain (1) elimination of the subsidy or dumping practice, or (2) reduction of the net subsidy or the dumping margin to a level that eliminates completely the injurious effect of exports of the merchandise to the United States.

The President may not implement any modification to a quantitative restriction agreement as a result of these negotiations unless within one year after the date the President accepted the agreement the following conditions are met:

(1) The President submits to the administering authority and provides at the same time to persons who were, or are, petitioners and interested parties in the related proceedings (a) a description of the proposed actions the government is willing to take in order to achieve the negotiating objective; and (b) the proposed modifications to the quantitative restrictions in the agreement that the President believes are justified in response to implementation of those actions.

(2) The administering authority decides, on the basis of the best information available to it, that the proposed actions will either eliminate completely the subsidy or dumping practice or reduce the net subsidy or dumping margin.

(3) If the decision of the administering authority on the proposed actions is affirmative, the ITC decides, on the basis of the best information available to it, that the proposed actions and proposed modifications in the quantitative restrictions are likely to eliminate completely the injurious effect of exports of the merchandise to the United States.

(4) The President invites the comment of the present or former petitioners and other interested parties regarding the proposed actions and proposed modifications and takes into account all such comments that are submitted in a timely fashion.

(5) The President is satisfied that the government concerned has actually implemented actions to eliminate the subsidy or dumping practice or to reduce the net subsidy or dumping margin to a level that eliminates completely the injurious effects.

Elimination of the subsidy or dumping practice or of its injurious effects must occur within the first 12 months that a quantitative restriction agreement is in effect if any modification is to be made in the import quota levels. The provisions regarding negotiations and possible modification of quantitative restrictions also cease to apply in the case of any such agreement suspending a countervailing duty investigation at such time as the agreement ceases to have force and effect because of a final negative determination in a requested continuation of the investigation under section 704(f) or because of a violation of the agreement found under section 704(i). While the annual review provisions of section 751(a) would continue to apply in the case of suspension agreements, section 103 amends section 751(b)(1) to exempt suspension agreements involving quantitative restrictions from the provisions for review due to changed circumstances given their maximum 24-month duration and the interim review required under new section 761.

New section 762 requires that before the expiration of any quantitative restriction agreement (i.e., before the end of a maximum two-year period) two determinations must be made:

(1) The administering authority must determine whether any subsidy is being provided, or whether the merchandise is being sold in the United States at less than fair value. If so, the administering authority must also determine the amount of the net subsidy or the dumping margin as under present law.

(2) The ITC must determine whether imports of the kind of merchandise subject to the agreement will, upon its termination, cause or threaten to cause material injury to the domestic industry or materially retard establishment of such an industry.

These two determinations must be made on the record under procedures the two respective agencies prescribe by regulations. These determinations would be treated as final determinations made under section 705 or section 735 for purposes of judicial review under section 516A. The administering authority and the Commission would hold hearings in accordance with section 774, as amended, at the request of any interested party in connection with its proceedings. If the determinations by both agencies are affirmative, the administering authority must issue a countervailing duty or antidumping duty order under section 706 or section 736 effective with respect to merchandise entered on or after the termination date of the agreement. Section 103 also amends section 751(b)(1) to apply the provisions for review due to changed circumstances to any affirmative determinations made under new section 762(a).

Finally, section 103 amends section 751(a)(1) to require annual reviews of countervailing duty or antidumping duty orders and of suspension agreements only if a request for such a review has been received by the administering authority. The purpose of this amendment is to reduce the administrative burden on the Department of Commerce of automatically reviewing every outstanding order even though circumstances do not warrant it and parties to the case are satisfied with the existing order. The increasing number of outstanding orders subject to review each year imposes an unnecessarily heavy burden on limited staff resources.

Reasons for change

Under present law, there is no procedure following the acceptance of a quantitative restriction agreement to assure that the unfair practice is corrected; the import quota, in effect, permits the unfair practice to continue as long as a specified

volume of imports is not exceeded. In the past, settlement of countervailing duty or antidumping investigations has occurred on the basis of import quotas because of the existence of subsidies or dumping margins so large that a product likely would be totally withdrawn from the U.S. market should the countervailing or dumping duties be applied. Imposing the time limit on any quantitative restriction agreement coupled with the requirements to conduct negotiations and to replace import quotas with duties to offset the amount of any injurious residual subsidy or dumping margin once the agreement terminates should provide the leverage and the procedure for seeking an end to extensive subsidy and dumping practices. The possibility of modifications in the import quota levels also provides an incentive to a foreign country to eliminate or reduce its unfair trade practices before the agreement expires and countervailing or antidumping duties are imposed.

SECTION 104. DEFINITIONS AND SPECIAL RULES REGARDING UPSTREAM AND OTHER SUBSIDIES, DOWNSTREAM DUMPING, MATERIAL INJURY, AND INTERESTED PARTIES

Section 104 amends certain definitions of terms and special rules under section 771 pertaining to the scope of antidumping and countervailing duty investigations, and determinations of material injury.

DEFINITION OF SUBSIDIES

Present law

Section 771(5) defines the term "subsidy" as having the same meaning as "bounty or grant" under section 303 of the Tariff Act of 1930 bestowed or paid with respect to an imported product, and including but not limited to:

(1) any export subsidy in the illustrative list contained in Annex A of the GATT Agreement on Subsidies and Countervailing Measures; and

(2) the following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(a) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(b) The provision of goods or services at preferential rates;

(c) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry;

(d) The assumption of any costs or expenses of manufacture, production, or distribution.

Explanation of provision

Section 104(a)(1) of the bill amends the definition of the term "subsidy" by including a new subparagraph (A) under section 771(5) to add specifically any "export targeting subsidy," any "natural resource subsidy," or any "upstream subsidy," as described below, to the coverage of export subsidies and domestic subsidies which are presently subject to the countervailing duty law.

Reasons for change

The purpose of expanding the specific list of practices to be defined as subsidies for purposes of the countervailing duty law is to make that law more current in its coverage of the types

of practices which governments now utilize. The law was last revised under the Trade Agreements Act of 1979 to implement in domestic law the provisions of the GATT Agreement on Subsidies and Countervailing Measures negotiated as part of the Tokyo round of Multilateral Trade Negotiations. That Agreement sought to prohibit the use of export subsidies by signatory countries and to discipline their use of domestic subsidies that cause material injury to industries or adversely affect the trade benefits of other countries.

However, intervention by governments in the marketplace to enhance the competitive performance of particular industries has increased and the form of subsidy practices has proliferated far beyond the imagination of the original drafters of the term "bounty or grant" in U.S. law or in the GATT. The Subcommittee is very concerned about the distortions of trade patterns caused by subsidies and their impact on the competitiveness of domestic industries. Stronger disciplines are necessary to discourage the use of injurious subsidies, otherwise, in the longer run, they threaten the operation of market forces and the viability of domestic economies as governments are forced to misallocate resources by matching foreign subsidy levels. A remedy should be available to restore "a level playing field" for U.S. industries in international trade competition with respect to current forms of subsidy practices. Consistent with GATT international trading rules, no countervailing duties can be imposed against such practices under the bill unless the current standards of material injury to the domestic industry are met.

Export Targeting Subsidies

Present law

No provisions.

Explanation of provision

Section 771(5)(B)(i), as added by section 104(a)(1), defines the term "export targeting subsidy" as "any government plan or scheme consisting of coordinated actions, whether carried out severally or jointly or in combination with any other subsidy under subparagraph (A) that are bestowed on a specific enterprise, industry, or group thereof, . . . the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise."

In addition to export or domestic subsidy practices covered under present law, export targeting actions would include, but not be limited to, the following practices:

(1) The exercise of government control over banks and other financial institutions that requires diversion of private capital on preferential terms to specific beneficiaries or into specific sectors. Provision of government loans on preferential terms, as opposed to diversion of private capital, is defined as a subsidy under present law.

(2) Extensive government involvement in promoting or encouraging anticompetitive behavior among specific beneficiaries, including:

(a) Assistance in planning and establishing joint ventures which have an anticompetitive export effect;

(b) Relaxation of antitrust rules normally applied to industries to assure the development of anticompetitive export cartels;

(c) Assistance in planning or coordinating joint research and development among selected beneficiaries to promote export competitiveness; and

(d) Regulations concerning the division of markets or allocation of products among selected beneficiaries.

(3) Special protection of the home market that permits the development of competitive exports in a specific sector or product.

(4) Special restrictions on technology transfer or government procurement that limit competition in a specific sector or industry and thereby promote export competitiveness.

(5) The use of investment restrictions, including domestic content and export performance requirements, that limit competition in a specific sector or industry and thereby promote export competitiveness.

Section 771(5)(B)(ii), as added by section 104(a)(1), specifies that in determining the level of an export targeting subsidy, the administering authority must use a method of calculation which, in its judgment and to the extent possible, reflects the full benefit of the subsidy to the beneficiary over the period during which the sudsidy has an effect, rather than the cash cost of the subsidy to the government.

Reasons for change

The inclusion of export targeting as defined in section 104(a)(1) of the bill as a subsidy within the scope of the countervailing duty law reflects the growing recognition in the United States that foreign industrial targeting practices can have an injurious impact upon the viability and competitiveness of U.S. industries. Basically, the provision applies to a situation where the foreign government has sought to develop a particular industry by creating a relatively risk free environment to provide a competitive advantage the industry would not otherwise have under normal market conditions. This advantage is typically achieved through a combination of practices such as directing private capital as well as government financial resources to the particular industry on a preferential basis, establishing an industry cartel, providing preferential sourcing of government procurement, closing the home market to foreign competition or investment during the establishment and development of the industry, then perhaps subsidizing export sales. Targeting is different from other potentially trade distorting practices in that it involves a combination of efforts, any one of which may have a marginal impact on the industry's competitiveness; but which taken together artifically create a comparative advantage for the selected industry.

At the same time, the amendment is not directed in any way against foreign industrial policies per se, which are solely a matter of internal government choice. Rather, the provision applies only when those targeting practices have the effect of increasing the export competitiveness of particular industries in a manner that is injurious to U.S. producers. If such policies cause harm to U.S. industries, they become an appropriate matter for remedy under U.S. trade laws.

The inclusion of export targeting practices as subsidies subject to the countervailing duty law if they meet the conditions specified in the bill is not intended to prejudice the seeking of relief under other existing trade remedy laws as appropriate in the particular circumstances of each case. Rather, the countervailing duty law will provide an additional avenue of relief from practices which have an injurious effect on domestic industries similar to more traditional forms of subsidies.

Implementation of the exporting targeting subsidy provisions under section 104(a)(1) of the bill would require a three-step determination by the Department of Commerce. First, there must be a government scheme or plan involving coordinated actions.

Information obtained by the ITC and provided the Department of Commerce under the targeting subsidy monitoring program established by section 201 of the bill is intended to assist the Department in making this determination in a timely manner. A positive determination would require that the targeting policy actually involve definite actions, not merely advice or a "vision" by the government. The actions also must not be isolated or uncoordinated, rather, they must be integrated into a reasonably coherent plan or scheme. While a showing of specific intent is unworkable given the unlikelihood of available evidence, the "plan or scheme" requirement is designed to ensure that the law deals with purposeful targeting and not with discrete forms of government activity.

Second, the Department must determine that targeting practices are involved. Current countervailing duty law specifically addresses only those subsidies which involve a cash transfer to the particular industry from the government treasury, such as grants, loans, or certain tax benefits. The inclusion of actions such as those listed under section 104(a)(1) of the bill supplement these more traditional forms of subsidies with practices which, when part of a government plan or scheme, have a subsidizing effect similar to financial assistance of assisting a specific enterprise or industry to become more export competitive. Export targeting subsidies may include forms of cash assistance covered by present countervailing duty law. However, the provision is directed primarily to the more sophisticated, less direct techniques of subsidizing which governments have resorted to as more traditional export subsidy practices are prohibited under international rules. The listing of targeting practices under section 104(a)(1) is purely illustrative and not exhaustive since it is not possible to anticipate the full scope of actions that governments may utilize to achieve the same results.

Third, the Department of Commerce must determine that the export targeting subsidy has the effect of assisting a discrete class of companies or industries to become more competitive in their export activities. The bill does not require a showing that the intent or purpose of the export targeting subsidy is to improve the competitiveness of a foreign industry in the United States market. A determination of motivation would be extremely difficult to make and subject to judicial challenge that would reduce the prospects for timely relief. Rather, the <u>effect</u> of the government plan or scheme must be to promote export competitiveness in a manner that is injurious to U.S industry.

As in the case of export and domestic subsidies covered by current law, the types of actions envisioned as export targeting subsidies would not be countervailable unless they were bestowed upon a specific enterprise or industry or group thereof. Such practices which are generally available to industries within the country would not be covered within the definition of export targeting subsidies under this bill.

Finally, no countervailing duty would be imposed on export targeting subsidies unless the ITC determines that the subsidized imports of the merchandise cause or threaten material injury to the U.S. industry, except in cases where the injury test does not apply to the country involved under present law. While individual targeting actions may have only a marginal impact, their cumulative effect may create an export competitive advantage which is injurious to the U.S. industry.

In determining the value of a targeting subsidy, the bill requires the Department of Commerce to use a method of calculation which reflects as accurately as possible the full benefits of the subsidy to the beneficiary enterprise or industry over the period during which the subsidy has an effect, rather than solely the cash cost of the subsidy to the government. This method is necessary for making a realistic assessment of the actual subsidy level in targeting cases, since many of the practices may not involve a simple cash transfer and their cumulative benefit may be greater than the current monetary value of an individual practice. For example, closing the home market to foreign competition or suspending antitrust laws may yield profits from higher prices and economies of scale that confer substantial competitive advantages to an industry that would not be offset under the current method of assessing benefits and would neither deter the foreign practices

nor remedy the injury to U.S. industry. Depending on the circumstances of the particular case, the assessment of the full benefit of the subsidy could include the effect of subsidies which were bestowed prior to the period of importation but which still are having an effect on the imports of the particular merchandise.

Concerns have been expressed that certain U.S. Government practices (for example, investment tax credits; "spillover" benefits of defense and space research and development programs to the computer, commercial aviation, and spacecraft industries; financing of agricultural price supports; and measures to promote formation of export trading companies) may become subject to mirror legislation in foreign countries imposing countervailing duties against our exports. It is highly questionable however, that such practices would constitute targeting as defined in the bill, which requires a government plan or scheme consisting of a coordinated action assisting a specific industry to become export competitive in a manner which is injurious to foreign producers.

Natural Resource Subsidies

Present law

Under section 771(5), any domestic subsidy described in subparagraph (B) may be subject to a countervailing duty action if it is provided or required by government action to a specific enterprise or industry, or group of enterprises or industries. Thus, a domestic subsidy involving natural resources may be countervailed, if it meets the specific industry test and is one of the subsidies described in subparagraph (B).

Explanation of provision

Section 104(a) further amends the definition of subsidy in section 771(5) to include a separate category of "natural resource subsidies" as a new subparagraph (C) within the list of government programs subject to countervailing duties. This provision addresses government price control mechanisms or regulations which grant a lower price to domestic manufacturers for basic resource products, such as energy, than the export price or fair market value. If such government programs meet certain criteria, products manufactured with the use of such subsidized resources may be subject to countervailing duties.

Under subparagraph (c)(i), a natural resource subsidy exists whenever a government-regulated or controlled entity sells natural resource products internally to its own producers at prices which, by reason of such regulation or control, are lower than the export price or the fair market value in the exporting country, whichever is appropriate (as determined by subparagraph (c)(ii)). Two additional conditions must also be met. First, the internal price must not be one which is freely available to U.S. producers for purchase and export to the U.S. market. Second, the resource product, as measured by the export price or fair market value, must constitute a significant portion of the production costs of the final product that is the subject of the investigation. This limitation is intended to ensure that the subsidy test would not apply to products where the resource component is a minor factor. However, for products such as cement or fertilizers, where the resource component as measured by the export price or fair market value (whichever is appropriate) is significant, the Subcommittee intends for this provision to apply.

Under subparagraph (c)(iii), the level of a natural resource subsidy for purposes of assessing the duty is the difference between the domestic price and the export price of the natural resource product; except that, in cases where there are no exports or where the export price is distorted by government manipulation, the administering authority must measure the subsidy by comparing the domestic price to the "fair market value"--the price that would normally apply in an arms length transaction absent govern-

ment regulation or control. Various guidelines are set forth to govern this fair market value determination; the determination would take into account such factors as the general world price and the U.S. price, but would also take into account any comparative advantage in the exporting country as well as such country's access or lack of access to export markets.

Reasons for change

The purpose of adding a specific provision to address the problem of natural resource subsidies is to discourage the growing use of two-tiered pricing arrangements and other below cost pricing structures by resource rich countries. These policies have the unwanted effect of subsidizing their domestic producers by affording them preferential or below market rates for resource products. The Subcommittee is aware of recent decisions by the Department of Commerce to the effect that pricing policies of this sort did not constitute subsidies because in those cases such prices were generally available to all domestic producers. However, the Subcommittee believes that resource pricing policies of the type described in this provision should constitute prohibited subsidies even where nominally available to all industrial users, at least in cases where the resource in question comprises a significant portion of the final product.

The Subcommittee believes that policies of the type addressed by this natural resource rule are subsidies within the meaning and spirit of the GATT and the Agreement on Subsidies and Countervailing Measures. Although the GATT recognizes a country's right to exercise control over its natural resources, many two-tiered pricing schemes distort prices to such a degree that the policies go beyond internal control of resources but rather provide a substantial subsidy to domestic production. To the extent that these policies prove injurious to U.S. industry, the Subcommittee believes they should be explicitly proscribed by the countervailing duty law.

The bill provides for two methods of measuring the subsidy level; the export price and, in cases where there are no exports or the export price is distorted, the fair market value. For some products, however, both tests are likely to yield reasonably similar results. Some resource products, such as petroleum, tend to have a reasonably uniform world price and countries that practice two-tier pricing may export at the general world price. In such cases, a fair market value determination is likely to yield similar results to an export test. In other products, however, prices may vary a great deal from market to market, and a realistic fair market value finding would have to assess such factors as the comparative advantage of the resource-producing country and its access or lack of access to lucrative export markets. Comparative advantage does not, in this context, refer to artificial advantages imposed through government control or regulation, since this would have the effect of negating the entire provision, but refers instead to any cost advantages enjoyed by such country by virtue of indigenous factors such as abundant supplies, lower production costs (including wage rates) or lower transportation costs.

Implicit in the Subcommittee bill is the principle that a country rich in natural resources might have a natural comparative advantage over other countries and could therefore establish export and domestic prices below the general world price and not be engaging in a subsidy practice. The provision of the bill only applies where a two-tiered pricing test or a fair market value test (whichever is appropriate) shows some form of subsidy to domestic producers.

Subparagraph (c)(ii) requires that prior to fixing the level of subsidy the Department of Commerce must determine whether there are exports of the resource product or whether the export price is distorted (significantly higher or lower than market

prices in the relevant market) by reason of government manipulation. If there are no exports, or if distortion is found, the fair market value test would apply. The question of distortion is a question of fact, and will depend upon an assessment of all the surrounding circumstances. Export prices may be set artificially high by government regulation to gain higher foreign exchange earnings, or may be artificially low to maintain full employment. These are only two examples of why price-distorting government manipulation may be occurring, and there may be other factors which could underlie such a finding. However, this assessment must be made by the Department of Commerce on the basis of all available information.

The term "natural resource product" is not defined in the bill. The Subcommittee clearly intends it to apply to basic energy products, such as petroleum, petroleum products (such as fuel oil), and natural gas. In addition, however, the Subcommittee believes that the definition should be left flexible enough to apply in appropriate circumstances to other natural resources if they are the subject of a two-tiered or below fair market value government pricing scheme and are a significant portion of the resulting manufactured product. Moreover, the term is broad enough to apply to cases where the government pricing scheme applies to different stages of processing or refinement of the basic resource product. In the energy area, for example, there is often a high degree of interchangeability between basic petroleum products and products at higher stages of refinement. The determination of whether the natural resource provision applies to products at higher stages of refinement would depend upon how far the government regulation or control actually extends. However, the provision is not intended to apply automatically to all items, regardless of the stage of manufacture, simply because they were originally derived from natural resources. The Subcommittee's major concern is with government price control schemes affecting the initial distribution of resource products which favor resource-intensive domestic producers.

UPSTREAM SUBSIDIES

Present law

Section 771(5) defines the term subsidy as having the same meaning as the term "bounty or grant" as that term is used in section 303. This term has never been explicitly defined to include or exclude subsidies bestowed on products at prior stages of manufacture or production. Section 771(5)(B), which defines domestic subsidies for purposes of the Act, does not explicitly refer to subsidies at prior stages, but does refer to indirect subsidies. Recent decisions by the Department of Commerce have indicated some degree of coverage for subsidies at prior stages of manufacture or production.

Explanation of provision

Section 104(b) of the bill adds a new section 771A establishing new definitions and methods of calculating upstream subsidies, which are included under section 104(a)(1) of the bill in the list of proscribed subsidy practices set forth in section 771(5).

Upstream subsidies are defined under new section 771A(a) as the types of subsidies described in section 771(5)(A) that are paid or bestowed on a product subsequently used to manufacture or produce merchandise which itself becomes the subject of either a countervailing duty or antidumping investigation. If such upstream subsidy results in a price for the intermediate product that is lower than the generally available price (adjusted to offset artificial depression due to any subsidies or dumping) and has a significant effect on the cost of manufacturing or producing the final merchandise, then the amount of such subsidy is included for purposes of duty assessment. This is true whenever the

administering authority finds that an upstream subsidy exists, whether in a countervailing duty or antidumping investigation.

The upstream subsidy provision is limited to subsidies bestowed by the country in which the final merchandise is manufactured, except that any customs union is treated as a single country.

The scope of inquiry by the administering authority is limited in upstream subsidy cases. The inquiry need not extend more than one stage prior to the final manufacturing or production stage, unless information indicates that such practices have taken place or are occurring at an earlier stage of manufacture or production and have had or are having a substantial effect on the price of the final merchandise.

Reasons for change

New section 771A(a) establishes clearer limitations on a form of unfair trade practices which currently is subject to insufficient discipline. Although upstream subsidies are supposedly cognizable under current law, the Subcommittee believes such practices must be dealt with more adequately by the statute. There are no clear statutory guidelines and the Department of Commerce has refrained from utilizing the law effectively against this increasingly popular form of government assistance. Including a specific rule for upstream subsidies will provide greater guidance and will also serve to notify foreign producers that they will not be insulated from liability simply because the benefit they receive is on a product at an earlier stage of production. Where that benefit is passed through and affects the final exported article, it should be treated similar to normal subsidies.

The new provision seeks to establish more meaningful discipline, yet also seeks to recognize the administrative burdens and inherent difficulties of applying the statute to such subsidies. Accordingly, the Department of Commerce normally would not be required to investigate more than one stage up the chain of commerce, since this could prove administratively burdensome. There is a limited exception for cases where information exists to demonstrate the significance of subsidies or dumping further up the chain of commerce.

Moreover, the Subcommittee recognizes the informational difficulties that this new provision imposes. It is the Subcommittee's intention that certain determinations, particularly those relating to the generally available price and whether it is artificially depressed by subsidies or dumping, must be made on the basis of the best available information. For these reasons, the decisions of the Department of Commerce as to these factors must be given broad latitude when it comes to judicial review. The inherent difficulties of making upstream subsidy findings must be recognized and accepted by the courts.

The conditions set forth in subparagraph (a)(1) of new section 771A are to assure that upstream subsidy findings will only be made in cases where the benefits of the upstream subsidy are passed through to the producers of the merchandise under investigation. In this regard, two policy limits seemed sensible to the Subcommittee. First, the requirement that the subsidy result in a lower price for the upstream product than the generally available price is intended to exclude situations where the upstream subsidy does not affect the price of the upstream product relative to unsubsidized competition. Of course, the Subcommittee recognizes that there may be cases where the generally available price is itself artificially depressed, and in those cases a procedure for adjusting such price is required. The second policy limitation is the requirement that the upstream subsidy have a significant effect on the cost of manufacturing or producing the final merchandise. This is to avoid needless investigation and verification of upstream subsidies which,

although passed through to the final merchandise, are insignificant in affecting the competitiveness of that merchandise.

The upstream subsidy provision, as amended by the Subcommittee, treats any customs union as a single country for purposes of the provision's intra-country limitation. This exception for customs unions is justified because of the free movement of goods internally within such entities and the consequent likelihood that upstream subsidies granted by one member country will benefit production in a second member country.

DOWNSTREAM DUMPING

Present law

No provision.

Explanation of provision

As defined in new section 771A(b), downstream dumping occurs when a product that is subject to a countervailing duty or antidumping investigation includes materials or components which were themselves dumped (i.e., sold below their foreign market value), if their purchase price is lower than the generally available price (adjusted to offset artificial depression due to any subsidies or dumping) in the country where the final product is manufactured, and if the resulting price difference has a significant effect on the cost of manufacturing or producing the merchandise under investigation. The amount of dumping margin calculated under this method is to be included for purposes of duty assessment. The provision applies only to prior inter-country sales below foreign market value and does not apply to sales within the same country which are below cost.

If the Department of Commerce decides during the course of either an antidumping or countervailing duty investigation that downstream dumping is occurring or has occurred, then it must include as part of its duty calculation an amount equal to the difference between the foreign market value and the generally available price (or the adjusted price where the generally available price is artificially depressed) in the country where the final product is being produced.

As with upstream subsidies, the administering authority is not required to inquire regarding the presence of downstream dumping more than one stage prior to final manufacture, unless reasonably available information indicates dumping at a prior stage that is having or has had a substantial price effect.

Reasons for change

Current law does not address the problem of downstream dumping. Yet this practice is becoming a significant irritant to U.S. business. It is becoming a more frequent occurrence throughout the world for producers in one country to receive dumped components, incorporate them into a finished product as a way of reducing costs, and then pass on the ill effects of such dumping to a third-country market. Without some effort to control this phenomenon, our own manufacturers will find themselves continuously disadvantaged by the price competition resulting from such practices. Downstream dumping is just as pernicious as normal dumping, and should not be exempted from discipline.

The bill contains limitations on the applicability of the downstream dumping test similar to those imposed for upstream subsidies, with the same purpose--to permit additional duties only where the earlier dumping actually benefits the final product. Thus, the two conditions discussed earlier for upstream subsidies--relating to the calculation of whether the product is sold below the generally available price and to the requirement that the

prior act have a significant effect on the product's final costs--are also required in downstream dumping cases. There is also the same procedure for determining whether or not to adjust the generally available price to account for any artificial price depression caused by dumping or subsidization. This is necessary to ensure the use of a generally available price that is based on fair competition. The Subcommittee finds that all of these conditions are necessary in order to have a rational downstream dumping standard, one which prohibits truly unfair imports but recognizes a need to avoid imposing duties if the benefits of previous dumping have not been passed through to our market.

The downstream dumping test poses similar informational difficulties to the upstream subsidy provision. As mentioned earlier with respect to upstream subsidies, the Subcommittee recognizes that serious administrative difficulties will be encountered. In particular, it will be difficult to secure cooperation from the country that is dumping the prior-stage product in order to determine foreign market value, since producers in that country have no reason to cooperate with our authorities. Also, determinations as to the generally available price in the country of export to the United States--as well as the level of artificial price depression--will be difficult to establish with much precision. For these reasons, the Department of Commerce must have broad discretion to use the best available information and its calculations should be given great latitude by the courts.

CUMULATION

Present law

Under section 771(7)(B) the ITC, in making its determination of material injury, is required to assess both the volume of imports of the merchandise subject to investigation and the consequent effects of such imports. In applying this concept, the Commission frequently practices the principle of "cumulation"--adding together imports of the same merchandise from more than one country under investigation--when the facts and circumstances are deemed to warrant it. The decision to cumulate is made on a case-by-case basis and is solely within the discretion of each individual Commissioner. This practice has neither been ratified nor prohibited by statute.

Explanation of provision

Section 104(a)(2) of the bill establishes guidelines to govern the Commission's use of cumulation in injury investigations. The provision amends the injury criteria contained in section 771(7) to require the Commission to cumulatively assess the volume and effect of imports of like products from two or more countries subject to investigation, but only in cases where two conditions are met. First, marketing of the goods in question into the United States must be reasonably simultaneous. Second, there must be a reasonable indication that the imports in question will have a contributing effect in causing, or threatening to cause, material injury to the industry. If such conditions are found by the Commission to exist, cumulation is mandatory. The Subcommittee intends these to be the exclusive circumstances under which cumulation is appropriate.

Reasons for change

The purpose of mandating cumulation under appropriate circumstances is to eliminate inconsistencies in Commission practice and to assure that the injury test adequately addresses simultaneous unfair imports from different countries. Most Commissioners have applied cumulation under certain circumstances but have articulated a variety of differing criteria and conditions. However, cumulation is not required by the statute. In addition, a few Commissioners have imposed conditions which do not seem justified to the Subcommittee.

The Subcommittee believes that the practice of cumulation is based on the sound principle of preventing material injury which comes about by virtue of several simultaneous unfair acts or practices. However, it would only be appropriate to cumulate where there are manifest signs of contributing causation. The requirement that imports from each country have a contributing effect does not mean that each country's imports must by themselves cause "material injury", for this would nullify the whole cumulation principle. However, there must be some indication that the imports being cumulated contributed somehow to the industry's worsened condition. Of course, it remains a requirement that all of the imports together, when taken cumulatively, cause "material injury." Imports of like products from countries not subject to investigation would not be included in such cumulation.

THREAT OF MATERIAL INJURY TEST

Present law

Sections 705 and 735 of present law require, as a precondition to imposing countervailing or dumping duties, that the ITC determine whether an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of merchandise regarding which the administering authority has made an affirmative subsidy or dumping finding. The injury test does not apply in countervailing duty cases to dutiable imports from countries which are not parties to the GATT Agreement on Subsidies and Countervailing Measures or which have not assumed substantially equivalent obligations with the United States. The injury test also does not apply to duty-free imports from such countries if they are not members of the GATT or the test is not otherwise required under U.S. international obligations.

"Material injury" is defined in section 771(7) as "harm which is not inconsequential, immaterial, or unimportant." In making injury determinations the ITC must consider, among other factors on a case-by-case basis, (1) the volume of imports of the merchandise, (2) their effect on prices in the United States for like products, and (3) the impact of such imports on domestic producers of like products.

In determining whether there is a threat of material injury in countervailing duty investigations, the ITC must consider such information as may be presented by the administering authority on the nature of the subsidy (particularly whether it is an export subsidy inconsistent with the GATT Agreement) and the effects likely to be caused by the subsidy. Legislative history states that export subsidies are inherently more likely to threaten injury than other subsidies.

Explanation of provision

Section 104 (a)(2) amends section 771(7) to list various criteria which the ITC must consider, among other relevant economic factors, in making its determinations of whether there is a "threat of material injury" to a domestic industry by reason of subsidized or dumped imports. In addition to considering the nature of the subsidy in countervailing duty investigations as under present law, the Commission must consider whether there is a possibility that the merchandise (whether or not actually being imported at the time) will be the cause of actual injury based on any demonstrable adverse trend.

Factors for consideration would include (1) an increase in production capacity in the exporting country likely to result in a significant increase in exports of the merchandise to the United States; (2) a rapid increase in U.S. market penetration and the likelihood such penetration will increase to an injurious

level; (3) the likelihood that imports will enter at prices that will have a depressing or suppressing effect on domestic prices; or (4) a substantial increase in inventories in the United States. Determinations cannot be made on the basis of mere supposition or conjecture. There must also be sufficient information existing to conclude that the threat of injury is real and that actual injury is imminent.

In determining whether there is a threat of material injury in cases involving an export targeting subsidy, the Commission must consider the effect of the subsidy practices on the export competitiveness of the beneficiary and the extent to which such practices are likely to have a demonstrable adverse effect on the industry with regard to costs and availability of capital, outlays for research and development, and future investment. These constitute additional factors which the ITC must consider in determining whether the actual standards of threat of material injury are met.

Reasons for change

Present law does not contain any statutory guidance as to the factors which should be considered by the ITC in determining whether an industry in the United States is threatened with material injury by reason of imports of merchandise subject to a countervailing duty or antidumping investigation. The absence of such criteria has created uncertainty and confusion within the Commission and court challenges on what standards should apply; partly for this reason there have been relatively few cases decided by the Commission on the basis of threatened as opposed to actual material injury.

The Commission should examine all relevant factors relating to possible threat of material injury in all investigations in which it finds no present injury. The factors set forth in section 104(a)(2) of the bill are consistent with, and restate legislative history on, this term in present law as it was amended by the Trade Agreements Act of 1979. The factors listed are illustrative of the economic indicators which may be relevant, depending on the circumstances of the particular case and industry involved. As stipulated in the legislative history of the 1979 Act, determinations on the basis of threat cannot be made on the basis of mere supposition and conjecture and sufficient information must exist for concluding that the threat of injury is real and that actual injury is imminent.

The purpose of including such guidance in the statute is not to broaden or otherwise change the scope or meaning of present law or to make determinations of material injury based on threat either easier or more difficult to obtain. Rather, by restating previous legislative history in the statute, the Subcommittee seeks to clarify and remove any misunderstanding as to Congressional intent on the standards for determining whether the current test is met.

In cases involving export targeting subsidies the bill requires the Commission to consider special additional factors in determining whether material injury is threatened. These factors are based upon information received by the Subcommittee on actual private sector experience. The likelihood of unfair competition and actual injury in the future due to foreign targeting impedes the ability of U.S. industry in the present, even before imports occur, to raise capital, to invest in plant and equipment, and to engage in research and development. However, the actual standards for determining threat of material injury would be the same as in cases not involving export targeting practices.

Loss of sales by the U.S. industry in third countries or loss of its global market share are not included as special factors for consideration in determining whether that industry faces the threat of material injury from foreign targeting. The Subcommittee

believes that the effects of targeting in third country markets are more appropriately dealt with under other trade statutes than in laws concerned specifically with the impact of unfair competition in the U.S. market.

INTERESTED PARTY

Present law

Section 771(9) defines the term "interested party" for standing to file petitions under the countervailing duty and antidumping laws as (1) a foreign manufacturer, producer, or exporter, or U.S. importer, or a trade or business association, a majority of whose members are importers of the merchandise; (2) the foreign government of a country producing or manufacturing the merchandise under investigation; (3) a manufacturer, producer, or wholesaler of a like product; (4) a union or group of workers representative of an industry engaged in manufacture, production, or wholesale of a like product; and (5) a trade or business association, a majority of whose members manufacture, produce, or wholesale a like product in the United States.

Explanation of provision

Section 104(a)(3) amends section 771(9) by expanding the definition of "interested party" for standing in countervailing duty and antidumping investigations to include an association, a majority of whose members is composed of (1) manufacturers, producers, or wholesalers in the United States of a like product; (2) unions or groups of workers representative of an industry manufacturing, producing, or wholesaling a like product in the United States; or (3) trade or business associations a majority of whose members manufacture, produce or wholesale a like product in the United States.

Reasons for change

The purpose of the amendment is to broaden the class of interested parties which have standing to file petitions under the countervailing duty and antidumping laws. It would enable coalitions to file a petition on behalf of a particular industry as long as a majority of the coalition's membership consists of manufacturers, producers, wholesalers, groups of workers, or trade associations with standing under present law and representative of the particular industry producing the like product. This standing requirement would be met as long as a majority of the combined membership of the coalition individually meets the standing requirements under present law and represents the industry producing the like product. It is not necessary that a majority of the individual firms and a majority of the unions also represent the particular industry if a majority of the members of an association in the coalition are representative.

SECTION 105. NONMARKET ECONOMY PRICING

Present law

As provided under section 773(c), if an exporting country is State-controlled to an extent that sales of the merchandise in that country or to third countries do not permit a determination of foreign market value in antidumping investigations, the administering authority must determine the foreign market value on the basis of normal costs, expenses, and profits as reflected by either (1) prices at which such or similar merchandise of a non-State-controlled-economy country is sold for consumption in the home market of that country or to other countries, including the United States; or (2) the constructed value in a non-state-controlled-economy country.

Explanation of provision

Section 105 of H.R. 4847 as introduced amended section 773(c) to provide a new alternative pricing standard for determining dumping margins in cases in which available information indicates to the administering authority that the relevant sector of the economy from which the merchandise is exported is State-controlled to the extent that foreign market value cannot be determined under the normal rules of section 773(a). In such cases the administering authority could determine foreign market value on the basis of a new test of the "lowest free market price" of like articles in the United States if that price were a competitive free market price, as an alternative to the present so-called "surrogate country" test of section 773(c).

The lowest free market price is defined as the lowest average price, adjusted to disregard the lowest 10 percent of the average, charged by all U.S. producers or any non-State-controlled economy countries for like articles in the U.S. market. This price would be adjusted to take account of any price depressing effect of imports of the dumped merchandise by the nonmarket economy country, as well as for differences in quantity, level of trade, duties, or other factors required to ensure comparability. In addition, prices offered by free market producers which have been the subject of a preliminary of final dumping or subsidy determination would be excluded.

The administering authority would continue to use the present "surrogate country" test if it determined that the lowest free-market price is not a competitive price by virtue of a limited number of free market suppliers of the merchandise in the U.S. market. The surrogate country test would remain available as an option in other circumstances, if a truly comparable surrogate country exists.

There appears to be general consensus within the private sector, the relevant Executive branch agencies, and the Subcommittee that the surrogate country test is unsatisfactory. The biggest problem it creates is unpredictability and lack of advance knowledge for nonmarket suppliers or U.S. importers and for the domestic industry as to which country will be selected as a surrogate for establishing foreign market value. Consequently, importers do not know what might constitute a dumped price in order to guage their prices accordingly. Potential petitioners do not know whether it is worthwhile to file a dumping complaint since, unlike cases involving market economies, they do not have advance knowledge of the home market price of their competitors and the likelihood of a dumping finding.

The purpose of including in H.R. 4784 as introduced the alternative test of lowest free market price in the United States was to provide greater certainty and less complexity for importers and potential petitioners in determining what benchmark price would apply in antidumping cases involving nonmarket economies.

However, the Subcommittee decided in markup session to delete the lowest free market price alternative test since there was not consensus that the lowest price, as opposed to an average price, for example, would be the most appropriate benchmark that would produce equitable results for both domestic industry and foreign suppliers. Some Members were concerned that a lowest free market price test might be set by very low wage, high volume suppliers and nonmarket economy countries could reduce their prices to that level bearing no relation to their actual costs of production in order to earn hard currency and still escape dumping duties. Other Members were concerned that a higher threshold, such as an average free market price, would penalize efficient foreign producers and provide absolute protection and an invitation to raise prices to domestic producers selling below the average by unjustifiably defining foreign sales below that level as automatic dumping. The price test was deleted in H.R.

4784 as reported with the understanding that a satisfactory alternative would be sought, with the assistance of the Executive branch, for resolving the issue for consideration in the full Committee.

Section 105 of H.R. 4784 as reported would retain the portion of the amendment to section 773(c) in the bill as introduced which revises the basis for applying the surrogate country test of present law in antidumping investigations. The administering authority would determine foreign market value on the basis of the surrogate country test if available information indicated that the relevant sector of the economy of the country from which the merchandise is exported is state-controlled to the extent that sales or offers of sales of the merchandise in that country or to third countries do not permit a determination of foreign market value under the normal rules of section 773(a). Available information would include all information supplied by an interested party as defined in subparagraphs (A) or (B) of section 771(9), that is, a foreign manufacturer, producer, or exporter, the U.S. importer, or the foreign government.

Reasons for change

The amendment incorporates two changes in present law with respect to investigations involving nonmarket economies. First, the amendment permits the Department of Commerce to determine whether individual sectors of an economy as well as entire countries are state-controlled. This authority to distinguish particular sectors recognizes the fact that the economy of a country as a whole may be market oriented that individual industries may be state-controlled to the extent that cost and price information are not available or sufficiently verifiable on which to base dumping determinations under normal rules. On the other hand, there may be individual sectors in countries which have been traditionally treated as nonmarket in entirety that have verifiable price and cost of production information available to permit the determination of foreign market value without resorting to the surrogate country test. The amendment recognizes that the present country-by-country determination is too simplistic in today's reality of mixed economies.

The second change in present law under the amendment requires the Department of Commerce to examine all available evidence supplied by the foreign government, foreign producers or exporters, or by U.S. importers in making its determination as to whether the particular sector or country is State-controlled. The intent of this provision is to place a greater burden on the nonmarket economy country to demonstrate that its cost and price information is sufficiently reliable for it to be treated as a market supplier under normal dumping rules rather than under the surrogate country test.

SECTION 106. HEARINGS

Present law

Section 774(a) requires the administering authority and the ITC each to hold a hearing before making their final determinations in countervailing duty or antidumping investigations, upon the request of any party to the investigation.

Explanation of provision

New section 106 of H.R. 4784 as reported amends section 774(a) to create an exemption in the existing requirement for hearings by the ITC at the request of any party before making an injury determination in any countervailing duty or antidumping investigation. If investigations were initiated under both laws within six months of each other but before a final injury determination in either case regarding the same merchandise from the same country, a hearing by the Commission during one investigation

would be treated as compliance with the normal hearing requirement for both investigations. The Commission could require a hearing during each investigation in extraordinary circumstances. Such circumstances could result from a major change in the number or composition of exporters or domestic producers, for example. The Commission would also allow any party to submit additional written comment it considers relevant during any investigation on which the hearing requirement has been waived.

Reasons for change

The purpose of this amendment is to reduce the unnecessary administrative burden and expense for the ITC and petitioners and other interested parties of duplicate hearings in investigations involving essentially the same factual circumstances. Opportunity would be provided through written comments to update and supplement information gathered in the first investigation as necessary to maintain current information for the injury determination in the second case.

SECTION 107. VERIFICATION OF INFORMATION

Present law

Under section 776(a) the administering authority is required to verify all information relied upon in making a final determination in an investigation. In publishing the determination, the administering authority reports the procedures and methods used in verification. If verification is not possible, the administering authority uses the best information available to it for making the determination.

Verification is not required in annual review proceedings under section 751. However, the administering authority normally verifies information where it believes there is a significant issue of law or fact.

Explanation of provision

Section 107 amends section 776(a) to require verification of information whenever the administering authority revokes a countervailing duty or antidumping duty order under section 751(c).

Reasons for change

The consequences of a revocation action are that the existing countervailing duty or antidumping duty order no longer exists. In such circumstances, the Subcommittee believes it essential to protect the interests of the domestic industry by requiring that any information relied on in making such a determination be fully verififed, so that duty protection will not be eliminated on the basis of erroneous information.

SECTION 108. RELEASE OF CONFIDENTIAL INFORMATION

Present law

Under existing law (section 777), the administering authority and the ITC must maintain a record of ex parte meetings between (1) interested parties or other persons providing factual information, and (2) the person charged with making the determination and any person charged with making a final recommendation to that person. This record is included in the record of the investigation.

These agencies may disclose, in a form which cannot be used to identify operations of a particular person, any confidential information received during a proceeding and any information not designated as confidential by the person submitting it.

Information submitted to the administering authority or the ITC designated as confidential cannot be disclosed to any person

(other than those directly concerned with carrying out the investigation) without the consent of the person submitting it unless pursuant to a protective order. If the administering authority or the ITC determines that designation of information as confidential is unwarranted, they must notify the person submitting the information and request an explanation of the reasons. Unless the person is persuasive or withdraws the designation, the information will be returned.

Both agencies are permitted to make confidential information available under a protective order upon receipt of an application which describes the information requested and reasons for the request. If the administering authority denies any request, or the ITC denies a request for confidential information in support of the petitioner concerning domestic price or cost of production of the like product, application may be made to the Court of International Trade for an order directing the information be made available. The Court may issue such an order subject to appropriate sanctions. Legislative history states the expectation that disclosure generally will be made only to attorneys who are subject to disbarment from practice before the agency.

Explanation of provision

Section 108 amends section 777 in several respects. First, subsection (b) is amended to permit release of confidential information to an officer or employee of the Customs Service who is directly involved in conducting an investigation regarding fraud under Title VII. Second, subsection (b) is also changed to provide a more orderly procedure for requesting confidential treatment and obtaining release of information that is granted such treatment. Finally, subsection (C)(1)(B) is amended to preclude any distinction between corporate and retained counsel in the regulations of the ITC and the administering authority governing issuance of protective orders.

With respect to the new procedure for releasing confidential information, the administering authority and the Commission must require that information for which confidential treatment is requested be accompanied by a nonconfidential summary (or an explanation of why such a summary is not possible) and by a statement either permitting or opposing release of such information under administrative protective order.

Reasons for change

Allowing the release of confidential information for a Customs fraud investigation is intended solely to prevent an unintended restriction from continuing. The reason for this change is to improve administration of our customs laws by increasing the likelihood that parties allegedly engaging in civil fraud will be scrutinized.

Permitting the standardized release of confidential information is intended to reduce administrative burdens and speed up decisionmaking regarding access to confidential information. Under current law there is no standard procedure for affecting release, and decisions are normally made on an ad hoc basis. While the Subcommittee realizes that each request for confidential treatment must be examined on its own merits, a standardized procedure will help to simplify and bring more order to the system, reduce time-consuming and costly filings by parties, and encourage more timely decisions regarding release of information.

The Subcommittee agreed to preclude any distinction between corporate and retained counsel in agency regulations because it believes that no basis exists in law or policy for treating these two classes of individuals separately. Agency regulations have drawn such a distinction because of fears that release of information to retained or in-house counsel would create too great a risk of release of such information to other operating elements

of the corporation. This distinction was supported by language in the legislative history to the 1979 amendments. However, the Subcommittee now believes that appropriate safeguards exist to protect against release within the corporation by retained counsel. First, the release of information under protective order is permissive and the agencies may weigh the risk of release in a particular case. Second, corporate attorneys are subject to disciplinary proceedings and possible disbarment for release of information which is subject to protective order. Thus, the Subcommittee sees no need to create an outright ban on disclosure to in-house counsel. The agencies will be expected, however, to enforce effective sanctions against unauthorized release and to prevent release if a risk of disclosure is demonstrated.

SECTION 109. SAMPLING AND AVERAGING IN DETERMINING UNITED STATES PRICE AND FOREIGN MARKET VALUE

Present law

For purposes of determining foreign market value only in antidumping investigations, section 773(1) authorizes the administering authority to use averaging or sampling techniques whenever a significant volume of sales is involved or a significant number of price adjustments is required, and to decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise. Legislative history states that "insignificant" means individual adjustments having an ad valorem effect of less than 0.33 percent and groups of adjustments having a cumulative ad valorem effect of less than 1.0 percent. Adjustments also should not be disregarded if they have, individually or cumulatively, a meaningful effect on competition even though they have a small ad valorem effect.

Explanation of provision

Section 109 of H.R. 4847 as reported adds a new section 777A to expand the instances in which the administering authority may use sampling and averaging techniques. Section 777A authorizes the administering authority, in determining United States price or foreign market value in antidumping investigations under section 772 and 773 or in carrying out annual reviews of antidumping or countervailing orders under section 751, to use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to price is required, and to decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

The authority to select appropriate samples and averages would rest exclusively with the administering authority, but are to be representative of the transactions under investigation.

Reasons for change

The purpose of section 109 is to reduce the costs and administrative burden on the Department of Commerce of determining dumping margins and of reviewing annually the amount of countervailing and antidumping duties under all outstanding orders. Under present law the Department of Commerce must ascertain the U.S. price of each individual transaction in an antidumping investigation and review countervailing duty and dumping margins annually on an entry-by-entry basis for each product and country subject to an order. By permitting the Department to use generally recognized averaging and sampling techniques and to disregard insignificant adjustments in all duty assessments, as it may currently for determining foreign market value, the Subcommittee seeks to maximize efficient use of limited staff resources and to expedite processing of individual cases and annual reviews without loss of reasonable fairness in the results.

SECTION 110. ELIMINATION OF INTERLOCUTORY APPEALS

Present law

Title V of the Tariff Act of 1930, as amended by Title X of the Trade Agreements Act of 1979, provides for judicial review of countervailing duty and antidumping duty proceedings in the Court of International Trade (CIT). Under section 516A, certain determinations by the administering authority are reviewable by the CIT prior to the issuance of a final determination or the publication of a final order. In other words, certain interlocutory determinations are reviewable immediately even though the administrative proceeding has not been concluded.

Those interlocutory findings which may be reviewed immediately under section 516A(a)(1) include a negative preliminary determination by the administering authority under sections 703(a) or 733(a) and a determination that a case is "extraordinarily complicated" under sections 703(c) or 733(c). Also reviewable on an interlocutory basis under section 516A(a)(1) and (a)(2)(B) are any determinations under section 751.

Explanation of provision

Section 110 of the bill amends section 516A(a)(1) to prohibit interlocutory review of "extraordinarily complicated" determinations under section 703(c) or 733(c) or negative preliminary determinations under section 703(b) or section 733(b). Instead, these findings would be fully reviewable when review is sought of a final affirmative or negative determination under section 516A(a)(2) and would be subject to reversal and possible remand by the CIT along with other interlocutory determinations made prior to a final determination.

Section 110 also amends section 516A(a)(2) to prohibit interlocutory appeals of determinations made during an annual review proceeding under section 751. Such appeals would instead occur after a final determination has been made by the administering authority or the ITC.

Finally, section 110 amends section 516A to clarify the treatment of certain types of final determinations and to clarify when judicial review of these determinations should occur. In particular, section 110 amends section 516A(a)(2)(B) to ensure that any part of a final affirmative determination by the administering authority which specifically excludes any company or product may, at the option of the appellant, be treated as a final negative determination and may be subject to appeal within 30 days of publication of the final determination by the administering authority. However, other negative aspects of an affirmative determination would be appealable within 30 days after publication of a final order, and if an appellant so chooses, appeal of those portions of an affirmative finding which exclude a product or a company may also be appealed within 30 days of publication of a final order, instead of within 30 days of the determination as described above. A new subparagraph (3) is also added to clarify that a final affirmative determination by the administering authority may be contested when an appeal is based on a negative determination by the Commission that is predicated on the size of the dumping margin or net subsidy.

Reasons for change

The purpose of eliminating interlocutory judicial review is to eliminate costly and time-consuming legal action where the issue can be resolved just as equitably at the conclusion of the administrative proceedings. Since no irrevocable harm occurs to any party until after the agencies have completed their investigations and have either issued or failed to issue a final antidumping or countervailing duty order, the interests of all parties can be protected by preserving their rights to appeal at that time. The Subcommittee received numerous objections from practitioners and representatives of both domestic and importing

interests who find the many interlocutory appeals to be costly and unnecessary. When Congress expanded judicial review as part of the Trade Agreements Act of 1979, it was felt that interlocutory review might help to perfect the record and would lead to better final determinations with fewer errors. However, the cost and delay of judicial review in the CIT are such that the benefits of interlocutory actions are outweighed by the attendant burdens.

The purpose of clarifying when negative portions of an affirmative determination may be reviewed is to permit appeals of determinations which exclude entire companies or products on the timetable most acceptable to the appealing party. The Subcommittee is aware of the decision of the CIT in Bethlehem Steel Corp. v. United States (Slip Opinion 83-97), in which the court refused to permit an appeal of certain negative findings (with respect to certain products or companies) that were part of an overall affirmative determination in accordance with the timetable for appeal of affirmative determinations. The court recognized that its ruling might lead to "undesirable piecemeal" litigation, but said that the correction must be made by "legislative fiat." The purpose of the Subcommittee's change is to permit an election by appellants of when to appeal such determinations and thereby to prevent piecemeal litigation.

SECTION 201. ESTABLISHMENT OF TRADE REMEDY ASSISTANCE OFFICE AND TARGETING SUBSIDY MONITORING PROGRAM IN THE UNITED STATES INTERNATIONAL TRADE COMMISSION

Section 201 amends part 2 of title II of the Tariff Act of 1930 by adding new sections 339 and 340 to establish a Trade Remedy Assistance Office and a Targeting Subsidy Monitoring Program in the ITC.

TRADE REMEDY ASSISTANCE OFFICE

Present law

No provisions.

Explanation of provision

New section 339 of the Tariff Act of 1930 as added by section 201 of the bill establishes in the ITC a Trade Remedy Assistance Office. This Office would be a centralized location within the government to provide full information to the public, upon request, concerning the remedies and benefits available under the trade laws and the procedures and dates for filing petitions and applications under such laws. This assistance would apply to petitions for relief under various provisions of the Trade Act of 1974, the Trade Expansion Act of 1962, and the Tariff Act of 1930. It would therefore cover petitions pertaining to all normal forms of trade remedies, such as import relief (section 201 of the Trade Act of 1974), relief from foreign import restrictions and export subsidies (section 301 of the Trade Act of 1974), relief under the antidumping and countervailing duty laws (Title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979) and relief from unfair practices in import trade (section 337 of the Tariff Act of 1930).

New section 339 also imposes a requirement on each agency responsible for administering these laws to provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications under such statutes (other than those which, in the opinion of the agency, are frivolous). The term "eligible small business" is defined as any business concern which, in the agency's judgement, has, by virtue of its small size, neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for trade law remedies and benefits. In making this determination, the agency may consult with the Small Business Administration and must consult with

other agencies that have provided such assistance. Agency decisions on whether a business concern is eligible for assistance are not reviewable by any court or other agency.

Reasons for change

The establishment of a Trade Remedy Assistance Office is essential in order to reduce the costs of filing trade remedy petitions and to minimize uncertainties about the types of remedies that should be pursued in particular situations. Although many large firms and industries are quite familiar with the complex maze of laws and procedures available to them, a number of smaller companies have been frustrated by these complexities.

The Subcommittee is aware of several instances where small business groups were frustrated by their lack of resources and unfamiliarity with the various petitioning procedures. This problem is most acute in sectors with a large number of small firms, such as certain types of agriculture. The Trade Remedy Assistance Office will be able to provide basic advice as to the appropriate laws for these groups to pursue--advice as to which agencies administer which laws and what the filing requirements and other procedural steps are. The Subcommittee believes that a single office to disseminate information about U.S. trade laws and provide basic advice about the types of action to pursue would represent a meaningful improvement over the present situation.

The statutory requirement that each agency responsible for administering a particular law provide further assistance to deserving small business entities is also a significant improvement over current law. Although some agencies do provide help to small business petitioners, there are inconsistencies in this practice and there are no formal procedures. The Subcommittee intends a mechanism whereby the agency decides, upon request, that a particular entity lacks the internal resources and financial ability to obtain qualified outside assistance (retained counsel). Thereafter, if the agency finds that the request for relief is not frivolous, it would assist in the preparation and filing of the necessary petitions. This assistance would include the legal and economic information support (including any non-confidential data available to the agency) necessary to file, but would not include advocacy services. Since the agency must remain in the role of investigator and fact-finder, it would not be appropriate for it to take a partisan role in the dispute.

TARGETING SUBSIDY MONITORING PROGRAM

Present law

No provisions.

Explanation of provision

New section 340 of the Tariff Act of 1930 as added by section 201 of the bill requires the ITC to establish and implement a continuing program to monitor and analyze the industrial plans and policies of foreign countries in order to discover whether targeting subsidies are being planned or have been implemented. Targeting subsidies would be those practices defined in section 711(5)(B) as added under section 104(a) of the bill. The Commission would give priority to those countries and product sectors in which the United States has significant economic or commercial interests. In determining these priorities, the Commission would consult with other Federal agencies and solicit the views and comments of the public. The Commission must regularly report the information resulting from the program to the administering authority defined under section 771(1) and make non-confidential information available to the public.

Each agency of the United States is directed to provide the ITC, upon its request, such information as the Commission considers necessary or appropriate to carry out its functions under this program. Classified information must be included if the provider agency is satisfied that the Commission will enforce appropriate measures to prevent its loss or unauthorized disclosure.

Reasons for change

The purpose of establishing a targeting monitoring program in the ITC is to develop information and expertise on a continuing basis about planned or actual industrial plans and policies of foreign countries in order to forewarn U.S. industries and the U.S. Government about possible export targeting subsidies. In the past, knowledge of and response to such practices has often come about only when their adverse impact is actually experienced by a U.S. industry in lost competitiveness. Development of better information about foreign industrial polices in their incipient stages complements the explicit recognition under section 104 of the bill of export targeting subsidies as countervailable under U.S. law. The program would place domestic industries in a better position to anticipate potential targeting problems and to seek an appropriate remedy under the countervailing duty or other trade laws before experiencing an actual injurious impact. The ITC would regularly report program information to the administering authority and make available non-classified portions to the public in order to facilitate this process.

At the present time several government agencies, in particular the Department of Commerce, the ITC, the Office of the U.S. Trade Representative, and the Central Intelligence Agency, are gathering and analyzing information about foreign industrial policies and targeting practices. However, section 201 consolidates and coordinates these activities in one agency and addresses the need to correlate the information in a central place in a timely fashion. The Subcommittee believes the ITC is the most appropriate agency for this function since its independent status would ensure objective nonpartisan analysis absent of political or policy considerations. The Commission also has comprehensive commodity expertise and extensive experience in examining and reporting on industry policies and programs on a thorough and factual basis. In order to avoid duplication and to maximize the use of resources, other agencies are directed to provide relevant information they collect to the ITC upon its request. The Subcommittee expects the ITC and individual agencies involved will work out mutually satisfactory security measures that will enable the Commission to obtain on a regular basis whatever classified information is necessary or appropriate for a comprehensive and consolidated program.

While the Subcommittee intends that the program monitor and examine targeting practices world-wide, it recognizes that staffing and other budgetary considerations require establishment of priorities for analysis in order to avoid excessive additional costs. The ITC would consult other agencies and private sector interests to determine the industries and countries of greatest U.S. economic and commercial interest for this purpose. However, the Subcommittee does not intend that the program be used to obtain and develop evidence at the behest of individual domestic industries which lack adequate information but believe a targeting problem exists. Rather, the ITC should conduct as comprehensive a monitoring program as possible and establish its own priorities based on available resources and broad consultations. The Subcommittee will review the operation and resource requirements for this program as part of its annual budget oversight and authorization responsibilities for the Commission.

SECTION 202. ADJUSTMENTS STUDY

Present law

The amount of dumping duties imposed on imported merchandise is equal to the difference, if any, between the foreign market value and the United States price. "United States price" includes the terms "purchase price" and "exporter's sales price". Purchase price is the price at which merchandise is purchased or agreed to be purchased prior to date of importation from the manufacturer or producer for exportation to the United States. It may be used if transactions between related parties indicate the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer. "Exporter's sales price" is the price at which merchandise is sold or agreed to be sold in the United States before or after importation, by or for the account of the exporter.

"Foreign market value" describes the value against which the U.S. price is compared in assessing dumping duties. It includes the terms home market price, third country price, and constructed value. Either third country price or constructed value are used if the exporter's home market prices are inadequate or unavailable to calculate fair market value, third country prices normally being preferred if presented in a timely manner and adequate to establish foreign market value.

Various statutory adjustments are provided for to obtain comparability of prices, for example, to account for differences in circumstances of sale, quantities sold, or qualitative characteristics.

Explanation of provision

Section 202 of H.R. 4784 requires the Secretary of Commerce to undertake a study of current practices that are applied in making adjustments to purchase prices, exporter's sales prices, foreign market value, and constructed value in determining dumping duties under section 772(d) and (e) and section 773. The study would include, but not be limited to, (1) a review of current adjustments, (2) a review of private sector comments and recommendations regarding adjustments that were made at Congressional hearings during the 98th Congress, and (3) the manner and extent to which such adjustments lead to inequitable results. The Secretary must complete the study within one year after the date of enactment of the bill and submit a written report to the Congress. The report would contain whatever recommendations the Secretary deems appropriate on the need and means for simplifying and modifying current adjustment practices.

Reasons for change

The Subcommittee received many suggestions from the private sector during its hearings on trade remedy law reform for changes in the various adjustments which the Department of Commerce may make under present law to the wholesale prices of transactions being compared for purposes of determining dumping margins. Many of these adjustments were discussed extensively during consideration of amendments to the antidumping law in 1979, but remain controversial. The adjustment process is also extremely complex, having developed over the years through accretion rather than logical and comprehensive analysis.

The overall basic goal of adjustments should be a fair and objective basis for achieving price comparability which does not give either domestic or foreign interests an advantage in the calculation of dumping margins. There is also a need to simplify the adjustment process and make it a coherent whole with a view to achieving greater predictability of results and savings in time and expense of investigation and administration. Consequently, the Subcommittee believes an indepth study of all present practices and their results and a comprehensive analysis of the implications

of the various proposals for change is necessary, rather than a piecemeal approach, before any legislative or administrative action is taken in this area.

SECTION 203. EFFECTIVE DATES

Section 203 sets forth the effective dates of the various provisions and amendments in the Trade Remedies Reform Act of 1984. The amendments made by sections 101, 103, 104, 105, and 109, concerning the practices and procedures involved in countervailing duty and antidumping investigations, would apply to investigations initiated by on or after the date of enactment of the Act. The amendments made by section 110 concerning judicial review would apply with respect to civil actions pending on, or filed on or after, the date of enactment of the Act. Section 339 of the Tariff Act of 1930 as added by section 201 of the Act, concerning establishment of a Trade Remedy Assistance Office, would take effect on the 90th day after the date of enactment. All other provisions of H.R. 4784 as reported would take effect on the date of enactment of the Act.

SUBCOMMITTEE ACTION

The Subcommittee on Trade held seven days of hearings on March 16 and 17, April 13, 14, and 19, and May 4 and 11, 1983, to consider options to improve the various trade remedy statutes, including the countervailing duty and antidumping laws (published in Serials 98-14 and 98-15). During those hearings, the Subcommittee received extensive testimony from Members of Congress, officials of Executive branch agencies, trade associations, labor unions, retail and consumer groups, individual companies, legal practitioners, academicians, and other individuals describing problems with existing laws and proposing modifications. The Subcommittee held an additional day of hearings on October 20, 1983, to receive testimony specifically on issues relating to subsidization of natural resources.

On September 28, October 3 and 4, 1983, and on February 2 and 7, 1984, the Subcommittee held markup sessions on conceptual amendments to the antidumping and countervailing duty laws, based upon suggestions received during the hearings, extensive written comments received subsequent to the hearings, and other pending legislation. H.R. 4784 was introduced on February 8, 1984, to reflect Subcommittee decisions during these markup sessions. In a final markup session on February 9 the Subcommittee agreed to three substantive amendments in H.R. 4784.

On February 29, 1984, the Subcommittee ordered H.R. 4784 favorably reported by voice vote to the full Committee on Ways and Means with the amendments agreed to on February 9.

EFFECT OF THE BILL ON REVENUE

As the attached letter from the Congressional Budget Office indicates, enactment of H.R. 4784 as ordered reported would have no effect on tax expenditures and no direct effect on revenues. However, revenues could increase by a negligible amount from tightening the investigation process, and by a higher amount if that results in more cases requiring imposition of countervailing or antidumping duties.

H.R. 4784 does not contain any authorization of appropriations for the Trade Remedy Assistance Office or the Targeting Subsidy Monitoring Program established in the ITC under Title II of the bill. Any additional funding required to implement these programs would be considered by the Subcommittee in its annual authorization legislation for the Commission.

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

March 8, 1984

Rudolph G. Penner
Director

Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4784, the Trade Remedies Reform Act of 1984, as ordered reported by the Subcommittee on Trade.

The bill would amend countervailing duty and antidumping duty laws and create a Trade Remedy Assistance Office within the International Trade Commission. Specifically, the bill would clarify the law with relation to situations when a product has been sold or is likely to be sold for importation but has not actually been imported; amend the authority to terminate or suspend countervailing duty or autidumping investigations; limit the duration of any quantitative restriction agreement accepted by the President as a basis for terminating or suspending an investigation; amend certain definitions of terms and special rules pertaining to the scope of autidumping and countervailing duty investigations and determinations of material injury; clarify treatment of nonmarket economies in the investigation process; allow an exemption in the existing requirement for hearings by the International Trade Commission to prevent duplicate hearings; allow the use of sampling and averaging techniques in investigations; establish a Trade Remedy Assistance Office within the ITC; and require the ITC to establish and implement a program to monitor and analyze the industrial plans and policies of foreign countries in order to discover whether targeting subsidies are being planned or have been implemented.

H.R. 4784 will have no effect on tax expenditures. While the bill would have no direct effect on revenues (i.e., duty and tariff schedules are not altered), revenue could increase by a negligible amount as a result of the tightening of the countervailing and antidumping duty investigation process. If the tightened process results in more cases requiring the imposition of such duties, then revenues would be higher.

With best wishes.

Sincerely,

Rudolph G. Penner

cc: Honorable Guy Vander Jagt
Ranking Minority Leader

WRITTEN COMMENTS SUBMITTED TO THE SUBCOMMITTEE ON TRADE REGARDING TRADE REMEDIES REFORM ACT (H.R. 4784)

Members of Congress

Robert A. Borski (D-PA) - Letter from constituents expressing harm to the American concrete industry due to imports of Mexican government-subsidized concrete products; they urge support of natural resource subsidy bill (H.R. 3658) and the Moore-Hance compromise in H.R. 4784. Congressman Borski requests the Subcommittee to review the problem and determine whether pending legislation will resolve it.

Carroll A. Campbell, Jr. (R-SC) - Feels PRC receives a subsidy on their exports of textiles (Chinese exporters can convert foreign exchange earnings to PRC currency at a more favorable exchange rate than the official rate). Feels the subsidy issue should be addressed in H.R. 4784.

Dan Coats (R-IN) (May 9) - He introduced H.R. 2523 to preserve the right of affected domestic industries to participate in settlement of antidumping penalties assessed under existing law.
(Oct 7) - Same as above, expressly, dumping of color TV's by Japan (feels Secretary of Commerce's self-assertion that he may use general compromise authority to circumvent rights of domestic parties to participate in antidumping duty assessments is unfair).

E. (Kika) de la Garza (D-TX) - Requests testimony from constituent expressing harm to U.S. concrete block producers due to Mexican government-subsidized natural resources. Congressman de la Garza feels his constituent's points are valid.

Butler Derrick (D-SC) - Transmits and urges consideration of proposals by Trade Reform Action Coalition to improve international trade laws. Congressman Derrick urges Congressional action to provide for fair competition among importers and domestic producers.

Thomas J. Downey (D-NY) (Jul 11) - Proposes that the GAO recommendation be followed, i.e., that the simulated constructed value method continue to be available in the calculation of foreign market value of nonmarket economy products, particularly if a concentrated market exists.
(Sep 15) - Acknowledges adoption of his suggestion of 7/11/83 regarding "nonmarket pricing".
(Dec 7) - Suggested language for "nonmarket pricing" section of remedies bill.

Gillis W. Long (D-LA) - Supports proposed legislation, particularly concerning the upstream subsidies provision.

Trent Lott (R-MS) - Strongly supports provisions of proposed legislation regarding foreign government subsidies of raw material inputs.

Robert T. Matsui (D-CA) - Transmits letter from California legislature reflecting harm to steel fabricators due to recent trade agreements entered into by Japanese steel mills and Korean steel fabricators. Congressman Matsui urges expeditious resolution of this matter and consideration in the trade remedies context.

Norman Y. Mineta (D-CA) - Supports legislation to remedy the unfair trade advantage given foreign competitors of U.S. firms due to two-tier pricing of natural resources.

Alan B. Mollohan (D-WV) - Strongly supports legislation. He feels the natural resource provision is vital to U.S. industries, such as carbon black producers.

G. V. (Sonny) Montgomery (D-MS) - Transmits letter from constituent regarding harm to U.S. fertilizer industry from two-tiered pricing of ammonia exports by foreign countries. Congressman Montgomery urges relief for the domestic industry.

Henry J. Nowak (D-NY) - Requests trade remedy assistance for small U.S. hotel and restaurant china industry suffering losses because of imports from low-wage and nonmarket countries.

William M. Thomas (R-CA) - Transmits letter from constituent requesting imposition of countervailing duties on unfairly subsidized Mexican cement being sold in the United States. Congressman Thomas urges consideration of constituent's views.

Congressional Steel Caucus - Requests the Subcommittee review and analyze Trade Reform Action Coalition legislation (H.R. 4124).

Executive Branch Agencies

Lionel H. Olmer, Under Secretary for International Trade, Department of Commerce - He expresses the Administration's opposition to the proposal to shorten the Commerce Department's current deadlines in antidumping and countervailing duty investigations. The Administration feels shortened deadlines will result in more hurried, less adequately supported decisions, which may provide earlier provisional relief to the domestic industry, but which may also result in lower final margins and, thus, reduced longer term relief.

Foreign Governments

Canadian Embassy, Allan Gotlieb, Ambassador - Expresses the feelings of Canada that the issues involved in the remedies legislation are of fundamental importance to international trade relations and should, therefore, be tackled on a multilateral basis so that they don't lead to international misunderstandings. Canada also questions the U.S.'s interpretation of subsidies, dual-pricing, and downstream dumping, feeling that determinations of these concepts on a general basis could be misunderstood on a case-by-case basis. Regarding antidumping, they feel that the inclusion of the calculation of the margin of dumping components or inputs imported by the exporter of products subject to investigation would be contrary to obligations under the GATT Antidumping Code.

Delegation of the Commission of European Communities - Feels implementation of certain provisions of H.R. 4784 would interfere with other governments' legitimate regulation of their internal industrial, economic and social policy sphere and thus give rise to new trade and political frictions between the U.S. and its major trading partners. Feels proposals are inconsistent with GATT principles, especially concerning export targeting, upstream subsidies and downstream dumping.

Private Sector

AFL-CIO - Strongly urges enactment of legislation to correct unfair two-tiered pricing of natural resources by foreign governments, especially concerning imports of Mexican cement.

American Association of Exporters & Importers - Strongly opposes proposed legislation unless revision or elimination of certain provisions. Submitted position paper with their ideas for such revisions.

American Petrochemical Consumers - Requests that the natural resource provision be deleted from the remedies bill, because imports of ammonia and cement from Mexico are minimal in relation to U.S. sales and they feel this provision is a hyprocrisy which says to our foreign customers "buy from us but don't sell to us." Submitted position paper reflecting their opinions of the pros and cons of the proposed legislation.

Ruben Arminana, Ph.D., New Orleans, LA - Urges review of subsidy calculations in various natural resource subsidy bills as it could trigger retaliations in international markets resulting in a decline of U.S. exports.

Association of American Chambers of Commerce in Latin America (Nov 7) - Strongly opposes proposed legislation as it will hinder U.S.-Latin American trade, especially concerning export targeting, upstream subsidies and natural resources. (Feb 9) - They urgently request that the Ways and Means Committee hold public hearings on the bill before any full Committee decisions are made, as they don't feel that the public was given a fair opportunity to testify on the proposed legislation at the Subcommittee level.

BMC Industries, Inc., Motorola Inc., and The Coalition for International Trade Equity - Supports proposed legislation, but suggests modifications to the targeting sections.

T. E. Bronson, Moore McCormack Cement, Inc. - Submitted a suggested letter to Mr. Baldrige expressing his feeling that the current interpretation by the Department of Commerce regarding natural resource subsidies is contrary to Congressional intent.

Busby, Rehm & Leonard, P.C., Wash., D.C. - Feels the proposed "natural resources" amendment to the countervail statute would be in violation of the GATT Subsidies Code. Submitted position papers reflecting their views of deficiencies in the proposed legislation, basically regarding subsidies.

The Business Roundtable - They basically support the remedies bill, feeling that it correctly identifies many of the deficiencies in current trade laws. However, they have concerns about some of the methods suggested for addressing these deficiencies, particularly regarding foreign export targeting, upstream subsidies, downstream dumping, and import quota settlements. Submitted a position paper reflecting ideas they feel would be workable and consistent with U.S. obligations under GATT agreements.

G. Thomas Cator, Southeastern Lumber Manufacturers Association, GA - Supports proposed legislation, but feels natural resource language could be changed to be of more assistance to the U.S. softwood lumber industry without violating the thrust of the bill.

Chamber of Commerce of the United States of America - Submitted position paper with their views and recommendations on the proposed legislation, as they are seriously concerned that many of the key changes to the countervail and anti-dumping statutes would impose a rigid, legislative, mandatory framework on complex trade policy that really requires flexible trade responses, as well as policy measures outside the trade area.

Chicago Association of Commerce & Industry - Urges the policy recommendations on increasing agricultural exports which they submitted be incorporated in any appropriate legislation.

Coalition for International Trade Equity (CITE) - Supports inclusion of targeting as a subsidy in proposed bill; suggests further improvements with respect to the effectiveness of targeting provisions.

Cold Finished Steel Bar Institute, Wash., D.C. - Submitted views and ideas of how the proposed legislation could more adequately deal with dumping by foreign suppliers and subsidies by foreign governments. Strongly support measures to simplify and expedite procedures.

Copper & Brass Fabricators Council, Inc., Wash., D.C. - Strongly supports Trade Reform Action Coalition legislation (H.R. 4124).

Corpus Christi Chamber of Commerce - Feels very careful consideration should be given to impact on U.S. economy of proposed legislation, and suggests a cross section of U.S. economy be able to debate the issues before enactment into law.

County of Cuyahoga, Cleveland, OH - Support Trade Reform Action Coalition legislation (H.R. 4124). They feel existing trade law language is vague and often misunderstood and therefore has caused government agencies to make totally arbitrary decisions, sometimes having no relation to facts or merits of a given complaint.

Barry M. Cullen, International Paper Company, Wash., D.C. - Supports the remedies legislation, but feels some of the language regarding natural resources may not be broad enough in some instances and too broad in other instances.

Cygnus Chemical & Metallurgical Corporation, El Paso, TX (Nov 16) - Feels very careful consideration should be given to impact on U.S. economy of proposed legislation, and suggests a cross section of U.S. economy be able to debate the issues before enactment into law.
(Feb 23) - Opposes H.R. 4784 as it will invite retaliation from the major trading partners and could seriously harm American industries. They request full public hearings as they feel the Subcommittee hearings were inadequate and did not reflect the public interest.

Data General Corporation, Westboro, MA - Support legislation addressing the market-distorting effects of targeting; believe it would be virtually impossible for American industry to prove the "purpose or intent" of a foreign government's actions; they oppose any requirements of proof of "intent and purpose."

John Derkach, Alpha Products, Inc., Chicago, IL - Strongly supports Trade Reform Action Coalition bill (H.R. 4124).

Emergency Committee for American Trade - Members feel targeting, subsidy and cumulation provisions of proposed legislation could hinder U.S. export and economic interests. They feel other countries would retaliate by imposing countervailing duties against U.S. products benefitting from U.S. targeting practices similar to those defined in the bill as being objectionable if undertaken abroad.

Robert M. Gottschalk, P.C., NY - Submitted ideas pertaining to petitioners in countervailing duty and antidumping investigations.

W. R. Grace & Company, Memphis, TN - On behalf of the Ad Hoc Committee of Nitrogen Producers, deeply concerned with inadequacies of the current trade remedy legislation and believes efforts to "level the playing field" with respect to natural resource subsidies deserve solid support.

M. Lewis Hall, Jr., Hall & Hedrick, Miami, FL - Urges support of natural resource subsidy bill (H.R. 3658); particularly concerned about Mexican cement.

Hemisphere Carriers Inc., New Orleans, LA - Requests that a cross section of the U.S. economy be provided an opportunity for debating the proposed legislation, as it may not be in the national interest.

International Trade Mart - Suggests Congress hold "field hearings" on the legislation in order that industries likely to be affected would be better served.

Kurt Hedrick and James B. Lendrum, General Portland Inc., Dallas, TX (Aug 30 and Sep 19) - Urge passage of natural resource legislation (H.R. 3658).
John R. Beasley (Feb 8) - Strongly urges relief for our domestic industries from two-tiered pricing schemes established by foreign governments, especially regarding Mexican cement imports.

Houdaille Industries, Inc., Ft. Lauderdale, FL - Strongly supports proposed legislation.

Kaiser Cement Corporation, Oakland, CA - Supports Moore-Hance compromise on natural resource subsidies and urges inclusion of it in proposed legislation.

Alfredo Gutierrez Kirchner, Petroleos Mexicanos, New York, NY - Feels the proposed natural resource amendment to the countervailing duty statute is a direct annulation of the comparative advantage that countries with abundant natural resources have in the production of natural resource intensive goods.

Labor-Industry Coalition for International Trade (Oct 3 and Jan 24) - Generally supports the proposed legislation, but feels it is lacking with respect to industrial targeting which should also be addressed under section 301; also proposes revisions of the escape clause provisions of the Trade Act of 1974. Submitted a draft of ideas.

Laredo Chamber of Commerce Executive Committee - Concerned that the proposed legislation may not be in the national interest and suggests a cross section of the economy be provided an opportunity for debating the issues.

Laredo Customhouse Brokers' Association, Laredo, TX - Concerned that the proposed legislation may not be in the national interest and suggests a cross section of the economy be provided an opportunity for debating the issues.

H. C. Morehead, Southwestern Portland Cement Company, El Paso, TX - Strongly urges relief for domestic industries from two-tiered pricing schemes established by foreign governments.

Motorola Inc., Wash. D.C. - Feels changes are necessary in current trade laws, especially concerning foreign industrial targeting, but that any changes must be consistent with GATT obligations.

National Association of Manufacturers - Feels the private sector has not had a fair chance of being heard regarding proposed legislation, as hearings were held in advance of draft language.

National Association of Wheat Growers, National Corn Growers Association, National Grange, Millers National Federation, American Soybean Association, National Broiler Council, National Grain Trade Council, National Soybean Processors Association, Rice Millers Association - Feel U.S. agricultural exports are potentially threatened by the export targeting subsidy and other sections of proposed legislation, and urge more hearings on those sections.

National Concrete Masonry Association - Strongly supports the inclusion of fuel as a countervailable duty item when it is made available at a domestic price which is lower than the export price or the price generally available to U.S. producers.

National Council of Farmer Cooperatives - Very concerned about the increased imports of nitrogen fertilizer, as they are a threat to the U.S. nitrogen industry.

National Foreign Trade Council, Inc., Wash., D.C. - Basically support the legislation and request an opportunity to testify at hearings. They feel the fundamental difficulties with the legislation are that it characterizes as unfair, and would penalize, trade practices and pricing methods which are prevalent in many countries and which are not considered to be in violation of the GATT.

National Gypsum Company, Dallas, TX - Favors reforming the trade remedy laws, especially concerning antidumping and downstream dumping provisions.

National Tooling & Machining Association (Nov 4) - Strongly supports Trade Reform Action Coalition legislation (H.R. 4124).
(Jan 31) - Recommends that the provision in the draft trade remedies bill requiring consideration of the level of subsidy or margin of dumping in injury determinations be deleted as it would further complicate already complicated injury determinations and be injurious to domestic petitioners if the levels were moderate.

N. David Palmeter, Daniels, Houlihan & Palmeter, P.C., Wash., D.C. - Suggests removing antidumping and countervailing duty investigatory functions entirely from Department of Commerce and moving them to the ITC, where the matters should be handled before an Administrative Law Judge, much like investigations presently are handled under Sec. 337 of the Tariff Act of 1930.

Port of New Orleans, New Orleans, LA - Concerned that the proposed legislation may not be in the national interest and suggests a cross section of the economy be provided an opportunity for debating the issues.

Potters Industries Inc., NJ - Supports legislation, as U.S. industries are being hurt by foreign government-subsidized raw materials.

Redland Worth Corporation, San Antonio, TX (Nov 18) - Concerned that the proposed legislation may not be in the national interest and suggests a cross section of the economy be provided an opportunity for debating the issues.
(Feb 23) - Opposes H.R. 4784, as they feel the Subcommitteee hearings were inadequate and they, therefore, request full public hearings before any comprehensive consideration of the bill at full Committee level.

Republic Steel Corporation, Wash., D.C. - Strongly urges support of Trade Reform Action Coalition bill (H.R. 4124).

Paul C. Rosenthal, Collier, Shannon, Rill & Scott - He feels, and the Specialty Steel Industry of the U.S. believes, that verification of information submitted by foreign producers and governments is absolutely essential to effective enforcement of the antidumping and countervailing duty laws. The provision in the bill as introduced to shorten the deadlines for antidumping investigations could result in hasty determinations. He and members of the domestic television industry feel that the Commerce Department is afforded too much discretion in the use of sampling and averaging techniques in determining U.S. price in initial dumping investigations and annual reviews of antidumping and countervailing duty orders.

SK Hand Tool Corporation, Chicago, IL - Strongly urges passage of Trade Reform Action Coalition legislation (H.R. 4124).

Squire, Sanders & Dempsey, Wash., D.C. - On behalf of a coalition of U.S. cement producers and workers, urges early enactment of legislation to make clear our countervailing duty law applied to imports that benefit from government provided energy subsidies; are specifically concerned about Mexican cement.

Stewart & Stewart, Wash., D.C. - They feel the timetable for antidumping and countervailing duty investigations should not be shortened as this would not be beneficial to domestic industries. The investigating agency will have less time to review the comments of the petitioners or to request supplemental questionnaire responses to cover new issues that develop during the course of an investigation or to arrange for a full verification.

Terrence D. Straub, United States Steel Corporation, Wash., D.C. - Submitted suggested amendment language and suggested legislative history language to remedy flaws contained in regulations issued by the ITC and the Court of International Trade concerning availability of confidential information to corporate in-house counsel.

Texas Association Mexican-American Chambers of Commerce, Austin, TX - Concerned that the proposed legislation may not be in the national interest and suggests a cross section of the economy be provided an opportunity for debating the issues.

Trade Reform Action Coalition - Supports H.R. 4124, because they feel inadequate trade laws and enforcement have been a major factor in the increase of the U.S. trade deficit, rising unemployment, and in allowing unfair foreign government competition to cause serious injury to the American manufacturing base.

United Cement, Lime, Gypsum & Allied Workers International Union (Oct 17) - Strongly urges relief for our domestic industries from two-tiered pricing schemes established by foreign governments.
(Nov 10) - Urges adoption of Moore-Hance language concerning natural resource subsidies.

Valley Builders Supply, Pharr, TX (Nov 8) - Requests support of natural resource bill (H.R. 3658) and also the Moore-Hance compromise concerning the inclusion of fuel as a countervailable item when the fuel is made available domestically at a price which is lower than the export price or lower than the price generally available to U.S. producers.

Ralph Valls & Sons, Corpus Christi, TX - Concerned that the proposed legislation may not be in the national interest and suggests a cross section of the economy be provided an opportunity for debating the issues.

Charls E. Walker Associates, Inc., Wash., D.C. (Nov 8) - On behalf of the Ad Hoc Committee of Domestic Nitrogen Producers, and in respect to Sec. 105 of H.R. 4784 on nonmarket economies, feels the reference price should be based on the "average free market price" in order for it to be most fair for all economies.
(Feb 1) - They strongly support the "Special Rule on Natural Resources."

Frank A. Weil, Wald, Harkrader & Ross, Wash., D.C. - Feels the "targeting" provision of the proposed legislation is a serious mistake; feels that discouraging subsidies would, in due course, reduce global trade.

Westinghouse Electric Corporation, Wash., D.C. - Strongly supports the proposed legislation; also supports CITE's suggestions and would like them included in the legislation.

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